(17,974.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 489.

THE CONSOLIDATED COAL COMPANY OF ST. LOUIS, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS

INDEX.

	Original.	Print.
Assignment of errors	*a*	1
Writ of error	*c*	1
Clerk's certificate as to copy of writ of error	*e*	2
Citation and service	*f*	3
Clerk's certificate as to copy of citation	*g*	3
Clerk's certificate and return to writ of error	*h*	4
Caption	1	4
Transcript from circuit court of St. Clair county	2	4
Caption	2	4
Declaration	3	5
Copy of account sued on	4	6
Plea	5	6
Bill of exceptions	6	6
Stipulation as to facts	7	7
Stipulation as to questions of law	10	8
Finding by the court	11	9

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 5, 1900.

	Original.	Print
Motion in arrest of judgment	11	9
Ruling on motion in arrest of judgment	12	9
Judge's certificate to bill of exceptions	12	9
Judgment	13	10
Clerk's certificate	14	10
Assignment of errors	14	10
Appearance for defendants in error	15	11
Order taking cause under advisement	16	11
Judgment	17	12
Opinion	18	13
Petition for writ of error	23	16
Order allowing writ of error	23	16
Bond on writ of error	25	16

a In the Supreme Court of the State of Illinois.

THE CONSOLIDATED COAL COMPANY OF St. Louis, Plaintiff in Error, *vs.* THE PEOPLE OF THE STATE OF ILLINOIS, Defendant in Error.	Error to the Circuit Court of St. Clair County.

And now comes the said plaintiff in error, by Charles W. Thomas, its attorney, and says that in the record and proceedings of the said supreme court in the above-entitled cause there is manifest error, in this:

First. The said supreme court erred in affirming the judgment of the said circuit court of St. Clair county.

Second. The said supreme court erred in not reversing the said judgment.

Third. The said supreme court erred in holding to be valid and not repugnant to the fourteenth amendment to the Constitution of the United States the acts of the General Assembly of the State of Illinois upon which the said suit is brought and mentioned in the declaration in the record aforesaid, to wit, an act entitled "An act providing for the health and safety of persons employed in coal mines," approved May 28, 1879, and the amendments thereto, and especially the amendments thereto approved June 15, 1895, and more particularly described in the stipulation of the parties contained in said record.

Wherefore the said plaintiff in error prays that the said judgment of the said supreme court, as well as the said judgment of the said circuit court of St. Clair county, may be reversed, and that
b such directions may be given that full force and efficacy may accrue to plaintiff in error by reason of its motion in arrest of judgment made in said cause in the said circuit court.

CHARLES W. THOMAS,
Attorney for Plaintiff in Error.

c The President of the United States to the honorable the judges of the supreme court of the State of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment which is in the said supreme court of the State of Illinois, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Consolidated Coal Company of St. Louis, defendant and plaintiff in error, and The People of the State of Illinois, plaintiff and defendant in error, wherein was drawn in question the validity of a statute of the said State on account of its being repugnant to the Constitution of the United States and the decision was in favor of the validity of such statute, manifest error hath happened, to the great damage of the said Consolidated Coal

Company of St. Louis, plaintiff in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the 20th day of November, A. D. 1890, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 22nd day of October, A. D. 1900.

d Attest my hand and the seal of the circuit court of the United States, at my office, in the city of Springfield, on the day and year last above written.

[The Seal of the Circuit Court of the United States for the South'n Dist. Ill.]

JAMES T. JONES,
Clerk of the Circuit Court of the United States.

Allowed this 22nd day of October, A. D. 1900.

CARROLL C. BOGGS, [SEAL.]
Chief Justice of the Supreme Court of the State of Illinois.

e In the Supreme Court of Illinois.

THE CONSOLIDATED COAL COMPANY *vs.* THE PEOPLE OF THE STATE OF ILLINOIS. } Error to St. Clair Circuit Court.

I, Richard F. Buckham, clerk of said supreme court, do hereby certify that on the twenty-fifth day of October, in the year of our Lord one thousand nine hundred, a copy of the foregoing writ of error for the defendants in error was lodged in my office, at Springfield, Illinois.

Witness my hand and the seal of said court this 25th day of October, A. D. 1900.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

RICHARD F. BUCKHAM,
Clerk of Supreme Court.

[Ten-cent U. S. internal-revenue stamp, canceled Nov. 9, 1900. R. F. B.]

f UNITED STATES OF AMERICA, ss:

The President of the United States to the People of the State of Illinois and Edward C. Akin, attorney general of the said State, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, within thirty days from the date of the service of this writ, pursuant to a writ of error filed in the office of the clerk of the supreme court of the State of Illinois for the southern division thereof, wherein The Consolidated Coal Company of St. Louis is plaintiff in error and you, the said People of the State of Illinois, *is* defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 22nd day of October, A. D. 1900, and of the Independence of the United States the one hundred and twenty-fifth.

CARROLL C. BOGGS,
Chief Justice of the Supreme Court of the State of Illinois.

Attest: R. F. BUCKHAM, *Clerk.*

Service of the above citation and receipt of a copy thereof admitted this 24 day of October, A. D. 1900.

E. C. AKIN,
Attorney General of the State of Illinois.

g In the Supreme Court of Illinois.

THE CONSOLIDATED COAL COMPANY vs. THE PEOPLE OF THE STATE OF ILLINOIS. } Error to St. Clair Circuit Court.

I, Richard F. Buckham, clerk of said supreme court, do hereby certify that on the twenty-fifth day of October, in the year of our Lord one thousand nine hundred, a copy of the foregoing citation was lodged in my office, at Springfield, Illinois.

Witness my hand and the seal of said court this 25th day of October, A. D. 1900.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

RICHARD F. BUCKHAM,
Clerk of Supreme Court.

[Ten-cent U. S. internal-revenue stamp, canceled Nov. 9, 1900. R. F. B.]

h In the Supreme Court of Illinois.

THE CONSOLIDATED COAL COMPANY
vs.
THE PEOPLE OF THE STATE OF ILLINOIS. } Error to St. Clair Circuit Court.

I, Richard F. Buckham, clerk of the supreme court of Illinois for the southern grand division and keeper of the records and files thereof, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from one (1) to twenty-seven (27), inclusive, contain a true and complete transcript and copy of the record and proceedings had in said court in the case which is above entitled, and of the whole thereof, including the opinion of the court, as the same remain of record and on file in my said office.

Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.

In testimony whereof I have hereunto set my hand and caused the seal of said supreme court of Illinois to be hereunto affixed, at Springfield, this 25th day of October, in the year of our Lord one thousand nine hundred.

RICHARD F. BUCKHAM,
Clerk of Supreme Court.

[Ten-cent. U. S. internal-revenue stamp, canceled Nov. 9, 1900, R. F. B.]

1 At a supreme court begun and held at Springfield on Tuesday, the fifth day of December, in the year of our Lord one thousand eight hundred and ninety-nine, within and for the State of Illinois.

Present: James H. Cartwright, chief justice; Alfred M. Craig, justice; Jacob W. Wilkin, justice; Joseph N. Carter, justice; Benjamin D. Magruder, justice; Jesse J. Philips, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Charles M. Woods, sheriff.

Attest: JACOB O. CHANCE, *Clerk.*

Be it remembered that afterwards, to wit, on the first day of January, A. D. 1900, there was filed in the office of the clerk of said court a certain transcript of record; which said transcript is in the words and figures following, viz:

2 STATE OF ILLINOIS, }
St. Clair County. }

At a regular term of the circuit court within and for the county of St. Clair and State — Illinois, begun and held at the court-house, in the city of Belleville, in said county of St. Clair, on Monday, the 11th day of September, A. D. 1899, it being the second Monday of September A. D. 1899, according to the act of the General Assembly, by the Hon. William Hartzell, one of the judges of the third judicial

circuit of the State of Illinois, of which the said county of St. Clair forms a part, the following proceedings were had, to wit:

Present: Honorable William Hartzell, judge; Herman Barnickol, sheriff; M. D. Baker, State's attorney; Thomas May, Jr., clerk.

3 STATE OF ILLINOIS, } ss:
St. Clair County, }

In the Circuit Court of said County, September Term, A. D. 1899.

The People of the State of Illinois, plaintiff, by Edward C. Akin, attorney general of said State, complain of The Consolidated Coal Company, a corporation of Illinois, defendant, of a plea of assumpsit; for that whereas the defendant, on the 1st day of July, A. D. 1897, at, to wit, the county and State aforesaid, was indebted to the plaintiff in a large sum of money, to wit, the sum of $1,818.00, for and on account of inspection fees of State mine inspectors for the inspection of certain coal mines located in said State of Illinois, owned and operated by said defendant, theretofore inspected by said State mine inspectors under and pursuant to the provisions of an act of the General Assembly entitled "An act providing for the health and safety of persons employed in coal mines," approved May 28, 1879, and the amendments thereto, and especially the amendments thereto approved June 15, 1895; which said inspection fees the said defendant then and there undertook and promised to pay; yet the said defendant, though often requested, hath not paid the said sum of money nor any part thereof to the plaintiff, but has neglected and refused so to do, to the damage of the plaintiff of $2,000.00; wherefor they bring suit, etc.

And the said plaintiffs further complain of the said defendant, for that whereas the defendant, on, to wit, the 1st day of December, in the year of our Lord 1899, at, to wit, the county and State aforesaid, became and was indebted to the plaintiffs in the further sum of, to wit, $1,818.00, for and on account of inspection fees of State mine inspectors for the inspection of certain coal mines located in
4 said State of Illinois owned and operated by said defendant, theretofore and since July 1, 1897, inspected by said State mine inspectors under and pursuant to the provision of an act of the General Assembly entitled "An act providing for the health and safety of persons employed in coal mines," approved May 28, 1879, and the amendments thereto, and especially the amendments thereto approved June 15, 1895; which said inspection fees the said defendant then and there undertook and promised to pay; yet the said defendant, though often requested, hath not paid the said sum of money nor any part thereof to the plaintiff, but has neglected and refused so to do, to the damages of the plaintiff of $2,000; wherefore they bring suit, etc.

EDWARD C. AKIN,
Attorney General.

Copy of Account Sued on.

Consolidated Coal Company to the People of the State of Illinois.

To inspection fees of State mine inspectors	$2,000.00
To inspection of mines of defendant	2,000.00
To visits of inspection of coal mines of defendant by State mine inspectors	2,000.00
To investigation of coal mines of defendant by State mine inspectors	2,000.00

Filed Dec. 11th, 1899.

THOMAS MAY, JR.,
Circuit Clerk.

5 STATE OF ILLINOIS, } ss:
St. Clair County, }

In the Circuit Court of said County, September Term, A. D. 1899.

THE PEOPLE OF THE STATE OF ILLINOIS }
vs.
THE CONSOLIDATED COAL COMPANY. }

And now comes the said defendant, by Charles W. Thomas, its attorney, and says that it did not undertake and promise in manner and form as the plaintiffs have thereof in their said declaration complained against it; and of this it puts itself upon the country.

CHARLES W. THOMAS,
Defendant's Attorney.

Filed Dec. 11th, 1899.

THOMAS MAY, JR.,
Circuit Clerk.

6 STATE OF ILLINOIS, } ss:
St. Clair County, }

In the Circuit Court, September Term, A. D. 1899.

THE PEOPLE OF THE STATE OF ILLINOIS }
vs. } Assumpsit.
THE CONSOLIDATED COAL COMPANY. }

Be it remembered that upon the trial of this cause, which by consent of parties was tried by the court without the intervention of a jury, the following proceedings were had, to wit:

The plaintiffs, to sustain the issues on their part, read in evidence the following stipulations:

7 STATE OF ILLINOIS, } ss:
St. Clair County, }

In the Circuit Court of said County, September Term, A. D. 1899.

THE PEOPLE OF THE STATE OF ILLINOIS }
vs. }
THE CONSOLIDATED COAL COMPANY. }

It is hereby stipulated and agreed by and between the several parties, plaintiff and defendant, in the above-entitled suit, for the purpose of this cause and not otherwise, in manner and form following:

That the said defendant, The Consolidated Coal Company, a corporation, is now and for more than a year last past has been the owner of certain coal mines and coal shafts situated and located in mining districts designated as fourth district, fifth district, and sixth district, State of Illinois, as is hereinafter stated, and that defendant at all times employed more than six coal miners at each of its mines.

That the mines of the defendant, 31 in number, have been inspected between November 2, 1895, and June 26, 1899, by a State inspector of mines, under authority of the act hereinafter mentioned, as follows:

111 inspections at $6 each,
69 inspections at $8 each,
60 inspections at $10 each,

making an aggregate of $1,818 for inspection fees.

That David Roos, secretary of the bureau of labor statistics of this State, in the due course and order of the business of his office, presented to the said defendant bills and demanded payment for said inspections to the amount of $1,818, as hereinbefore stated,
8 and that said defendant has neglected and refused to pay said bills or said inspection charges or either of them.

That the total number of mines in this State subject to inspection during said period under paragraph D of section eleven (11) of an act of the legislature of this State entitled "An act to amend section eleven (11) of an act entitled 'An act providing for the health and safety of persons employed in coal mines,' approved May 28th, 1879, in force July 1st, 1879, as amended by an act approved June 18, 1883, and an act approved June 30, 1885, and to repeal section two (2) of an act entitled 'An act to require inspectors of mines to furnish information to the State geologist and to provide for the paying the expenses of the same, approved June 18, 1891,'" was eight hundred and fifty-three, 853.

That the number of said mines subject to inspection under the act of July 1, 1897, entitled "An act to amend section eleven (11) of an act entitled 'An act to amend section eleven (11) of an act entitled "An act providing for the health and safety of persons employed in coal mines," approved May 28, 1879, in force July 1, 1879, as amended by an act approved June 18, 1883, and an act approved June 30, 1885, and to repeal section two (2) of an act entitled 'An act to require inspectors of mines to furnish information to the State geolo-

gist and to provide for paying of the expenses of the same,' approved June 18, 1891," approved June 15, 1895, in force July 1, 1895, was four hundred and twenty-five (425), producing 92.71 of the entire coal product of this State.

That the number of inspectors appointed under said acts is and was during all the time covered by this stipulation seven.

9 That the salary of each of said inspectors is and was during all the time covered by this stipulation eighteen hundred dollars ($1,800) per annum.

This stipulation shall be accepted as a statement of the facts in the above-entitled cause, agreed to between the several parties litigant, and upon which this case is to be and shall be tried.

EDWARD C. AKIN,
Attorney General.
CHARLES W. THOMAS,
Attorney for Defendant.

Filed Dec. 11th, 1899.

THOMAS MAY, JR.,
Circuit Clerk.

10 THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiffs,
vs.
THE CONSOLIDATED COAL COMPANY, Defendant.

It is hereby stipulated and agreed by and between the parties to said cause, by their respective attorneys, that the charges against said defendant upon which said suit is based and for the recovery of which said suit is brought were and are made under and pursuant to an act of the General Assembly entitled "An act providing for the health and safety of persons employed in coal mines," approved May 28, 1879, in force July 1, 1879, and the several amendments thereto since made and enacted, and that the question to be raised and disposed of in this suit is the validity and constitutionality of so much of said above-entitled act and the amendments thereto as relate to the inspection fees of the State mine inspectors and the imposing upon the mine operator and owner the duty of paying such fees, and also whether there is any remedy at law to recover such fees, and that if the said law is in these respects sustained under either or both counts of the declaration herein, the plaintiff shall have judgment for such sum or amount as appears by the stipulation and agreement of the parties on file herein to be due from the said defendant to the said plaintiffs and costs of suit; otherwise the defendant is to have judgment for its costs.

EDWARD C. AKIN,
Attorney General.
CHARLES W. THOMAS,
Attorney for Defendant.

11 And the plaintiffs rested, and defendant introduced no evidence, and this was all the evidence in the case; and thereupon the court found there is due from the defendant to the plaintiff the sum of $1,818.00 on account of the matters and things in the declaration mentioned; and to this finding of the court defendant at the time excepted.

And then the defendant made and filed the following motion in arrest of judgment:

STATE OF ILLINOIS, } ss:
St. Clair County, }

In the Circuit Court, September Term, A. D. 1899.

PEOPLE OF THE STATE OF ILLINOIS } Assumpsit.
vs.
THE CONSOLIDATED COAL COMPANY. }

And now comes the said defendant, by Charles W. Thomas, its attorney, and moves the court to arrest the judgment herein, and for cause and grounds of this motion defendant assigns the following:

I. The declaration sets out no cause of action.

II. The acts of the General Assembly of the State of Illinois in the declaration mentioned, and which authorized the imposition and collection of the inspection fees sued for, are invalid as being in contravention of the fourteenth amendment to the Constitution of the United States, in that they deny to the defendant the equal protection of the laws and provide for the taking of defendant's property without any due process of law.

12 III. The said acts are invalid because they contravene article IX of the constitution of the State of Illinois relating to revenue.

CHARLES W. THOMAS,
Attorney for Defendant.

And the court denied the motion, and to this action and decision of the court defendant at the time excepted, and then the court gave and entered judgment in favor of the plaintiffs and against the defendant for the said sum of $1,818.00 and the costs of this suit, to be taxed, and to this action and decision of the court the defendant at the time excepted; and, inasmuch as the matters and things aforesaid are not of themselves matters of record in the said cause, the defendant presents this its bill of exceptions and prays that it may be signed and sealed and made part of the record, which is done accordingly this 12th day of December, A. D. 1899.

WM. HARTZELL, [SEAL.]
Judge St. Clair Circuit Court.

13 THE PEOPLE OF THE STATE OF ILLINOIS
vs.
THE CONSOLIDATED COAL COMPANY. } Assumpsit.

And now, on this eleventh day of December, A. D. 1899, the same being the fourteenth Monday of the term, come the plaintiffs, by the attorney general, and the defendant, by Charles W. Thomas, its attorney, and this cause coming on to be tried, a jury is waived by the parties, and the cause is tried by the court by their consent. After hearing the evidence as contained in the stipulation of facts on file herein, the court finds issues for the plaintiffs, and that there is due to the plaintiffs from the defendant on account of the matters and things alleged in plaintiffs' declaration the sum of one thousand eight hundred and eighteen dollars. Thereupon the defendant made and filed herein its motion in arrest of judgment, which motion is by the court denied.

It is therefore considered, ordered, and adjudged by the court that plaintiffs have and recover from the defendant the said sum of one thousand eight hundred and eighteen dollars and the costs of this suit, to be taxed, and that plaintiffs have execution therefor.

14 STATE OF ILLINOIS, } ss:
St. Clair County, }

I, Thomas May, Jr., clerk of the circuit court of St. Clair county, in the State aforesaid, do hereby certify the above and foregoing to be a true and correct copy of: 1, declaration; 2, general issue; 3, bill of exceptions; 4, order of court, same being a complete record, as the same appears on file and of record in my office, in a certain cause lately pending in said court, on the law side thereof, wherein The People of the State of Illinois are plaintiff- and The Consolidated Coal Company is defendant.

In witness whereof I have hereunto set my hand and [SEAL.] affixed the seal of said court, at Belleville, this 13th day of December, A. D. 1899.

THOMAS MAY, JR., *Clerk*,
By PHIL H. JOPP, *Deputy*.

STATE OF ILLINOIS:

In the Supreme Court, — Term, A. D. 18—.

THE CONSOLIDATED COAL COMPANY, Pl't'ff in Error,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS. } Error to St. Clair Circuit Court.

And now comes the said plaintiff in error, by Charles W. Thomas, its attorney, and says that in the record and proceedings aforesaid there is manifest error, in this:

I. The circuit court erred in denying the motion in arrest of judgment, and

II. In entering judgment against the defendant upon the finding, and

III. In finding the issues for the plaintiffs.

Wherefore the said plaintiff in error prays that the said judgment may be reversed.

CHARLES W. THOMAS,
Attorney for Plaintiff in Error.

15 And afterwards, to wit, on the 7th day of February, A. D. 1900, the appearance of defendant in error was filed in the words and figures following, viz:

In the Supreme Court of Illinois, February Term, A. D. 1900.

THE CONSOLIDATED COAL COMPANY, Plaintiff in Error,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS, Defendants in Error.

And now comes the said defendant in error, by Edward C. Akin, attorney general, and enters its appearance in said cause to the present February term, 1900, of said court.

E. C. AKIN,
Attorney General.

16 And on the 15th day of February, A. D. 1900, the following proceedings were had and entered of record in said court:

THE CONSOLIDATED COAL COMPANY OF St. Louis
vs.
THE PEOPLE OF THE STATE OF ILLINOIS. } 1222. Error to Lawrence.

Now, on this day, come the parties hereto, and this being one of the days set apart for the call of the docket under the rules of this court, and it appearing to the court that plaintiff in error hath filed herein a duly certified transcript of the record and proceedings of the court below, together with printed abstracts thereof and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said defendant in error having entered motion to affirm said judgment and for costs and *procedendo*, and said motions being taken under advisement for final hearing, and the clerk of this court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the court:

Therefore it is ordered by the court that this cause be, and the same is hereby, taken under advisement.

17 *Affirmed Order.*

STATE OF ILLINOIS SUPREME COURT, *Southern Grand Division,* } ss:

At a supreme court begun and held on the first Tuesday in the month of June, in the year of our Lord one thousand nine hundred, the same being the fifth day of June, in the year of our Lord one thousand nine hundred.

Present: Carroll C. Boggs, chief justice; Benjamin D. Magruder, justice; Jacob W. Wilkin, justice; Jesse J. Phillips, justice; Joseph N. Carter, justice; James H. Cartwright, justice; John P. Hand, justice.

And afterwards, to wit, on the 21st day of June, in the year of our Lord one thousand nine hundred, an order was made by said court in words and figures following, to wit:

CONSOLIDATED COAL COMPANY *vs.* THE PEOPLE OF THE STATE OF ILLINOIS. } No. 1222. Error to Lawrence.

On this day come again the said parties, and the court having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid nor in the rendition of the judgment aforesaid is there anything erroneous, vicious, or defective, and that the record is no error; therefore it is considered by the court that the motions heretofore made to reverse the judgment and remand said cause for a new trial be, and the same are, denied, and the motion heretofore made to affirm the judgment herein is allowed, and it is therefore ordered by the court that the judgment aforesaid be affirmed in all things and stand in full force and effect notwithstanding the said matters and things therein assigned for error, and that motion for *procedendo* be allowed; and it is further considered by the court that the said defendant- in error recover of and from the said plaintiff in error costs by them in this behalf expended, and that they have execution therefor.

18 At a supreme court begun and held at Springfield on Tuesday, the fifth day of June, in the year of our Lord one thousand nine hundred, within and for the State of Illinois.

Present: Carroll C. Boggs, chief justice; Benjamin D. Magruder, justice; Jesse J. Phillips, justice; James H. Cartwright, justice; Jacob W. Wilkin, justice; Joseph N. Carter, justice; John P. Hand, justice; Edward C. Akin, attorney general; Charles M. Woods, sheriff.

Attest: RICHARD F. BUCKHAM, *Clerk.*

Be it remembered that afterwards, to wit, on the twenty-first day of June, 1900, the opinion of the court was filed in the words and figures following, to wit:

CONSOLIDATED COAL CO. vs. THE PEOPLE ex Rel. } No. 1222. Error to Lawrence. Appeal from —.

19 Docket No. 1222, Agenda 8, Southern Div., Feb., 1900.

THE CONSOLIDATED COAL CO. v. THE PEOPLE.

Mr. Justice PHILLIPS delivered the opinion of the court:

Judgment was rendered against the plaintiff in error for $1,818, on account of inspection fees for inspections made of its various mines by a State mine inspector between November 2, 1895, and June 26, 1899. There were one hundred and eleven inspections at $6 each, sixty-nine inspections at $8 each, and sixty inspections at $10 each. This writ of error is prosecuted to reverse that judgment.

The case was tried on an agreed statement of facts, from which it appears that the plaintiff in error is a corporation owning thirty-one mines in the fourth, fifth and sixth mining districts of the State of Illinois, for the inspection of which, during the time aforesaid, the inspection fees for which judgment was entered were charged. It was stipulated that the charges against said defendant upon which said suit is based and for the recovery of which said suit is brought, were and are made under and pursuant to an act of the General Assembly entitled "An act providing for the health and safety of persons employed in coal mines," approved May 28, 1879, in force July 1, 1879, and the several amendments thereto since made and enacted, and that the question to be raised and disposed of in this suit is the validity or constitutionality of so much of said above-entitled act, and the amendments thereto, as relate to the State mine inspectors and imposing upon the mine operator and owner the duty of paying such fees, and also whether there is any remedy at law to recover such fees; and that if the said law is in these respects sustained under either or both counts of the declaration herein, the plaintiff shall have judgment for such sum or amount as appears due, otherwise the defendant to have judgment for its costs.

Counsel for plaintiff in error in his brief says that the case of Chicago, Wilmington and Vermilion Coal Co. *v.* People, 181 Ill. 270, settles, so far as this court is concerned, all the questions that arise upon this record, except one, viz., whether or not the statute under which this suit was brought is in contravention of the fourteenth amendment to the Constitution of the United States,
20 in that it denies plaintiff in error the equal protection of the laws or takes its property without due process of law.

The act above referred to, as amended in 1897 (Hurd's Stat. 1897, p. 1088), after providing for the creation of inspection districts of the State to the number of seven, and the appointment of inspectors, one for each district, upon the recommendation of the board of examiners, and fixing their qualifications for office, experience, etc., oath, and bond conditioned for the faithful performance of their duties in every particular, as required by the act, to be approved by the governor, by paragraph 11*d* of the act provides as follows: "Any person, company or corporation operating any coal mine in this State shall be required to pay an inspection fee of not less than $6 nor more than $10 for each visit of inspection or investigation of a coal mine by a State mine inspector, such fee to be regulated by the class of the mine, which shall be fixed by the inspector and depend upon the length of time consumed, and the expense necessarily incurred in the inspection of such mine, and such fee shall be paid quarterly by the person, company or corporation operating the mine inspected to the secretary of the bureau of labor statistics and by him covered into the State treasury to be held as a fund for the payment of salaries of State mine inspectors, as herein provided. It shall be the duty of each inspector, as often as he may deem necessary and proper, and at least four times a year, to inspect each and every mine in his inspection district. Each inspection shall be certified to by the pit committee and mine manager of said mine. It shall be the duty of each inspector to keep a detailed record of all inspections and of all fees for such inspections, and he shall file a copy of the same with the secretary of the State bureau of labor statistics quarterly."

The section then proceeds to fix the salary of the inspectors at $1,800 per year, and provides that in the event of such fees being inadequate to compensate the inspectors in the amount provided, the deficiency in their salaries shall be paid out of any moneys in the State treasury not otherwise appropriated. The act further requires that the inspector shall be required to post up in a conspicuous place at the top of each mine visited and inspected by him, a plain statement of the condition of said mine, showing what, in his judgment, is necessary for the better protection of the lives and health of persons employed in said mine, the date of the in-
21 spection, the number of hours spent in the inspection, the date of the latest previous inspection, and provides for the authentication of the same by the inspector and check weighman.

In Chicago, Wilmington and Vermilion Coal Co. *v.* People, *supra*, we held that under the police power the legislature has the right to provide for the inspection of mines, and that it also has the right to place the burden of the expense of such inspections upon the mine-owners. Counsel for plaintiff in error contends, however, that the law in question is unconstitutional because it fails to lay down proper rules for its impartial execution; that it should fix the fees to be charged based upon the number of men employed or upon the size of the mine, or "some definite circumstance or condition," and should fix a reasonable number of inspections to be made annually, by which the exercise of an arbitrary discretion might be avoided. One inherent reason or excuse for impressing an industry with the duty

of submitting to an examination into its affairs or the conditions under which its business is conducted, lies in the fact that it is impracticable to lay down *a priori rules and regulations* or a sufficient test of their observance, which shall be fixed unalterably and unvarying, and in consequence thereof public safety demands a visitational control by the sovereign authorities, which shall be commensurate with the necessities and conditions as met, but ever reasonable, and without oppression or divestiture of property rights or greater than the exigencies demand, for the determination of which there is always the power reserved to the courts, and when a tribunal is called upon to pass upon such enactment it is met with every presumption in favor of the constitutionality of the act, and unless the legislative action is clearly subversive of private rights or perversive of legislative authority, after an examination into all the facts, circumstances and conditions that prompted or might have prompted the enactment of the act, its constitutionality must be upheld.

It is unnecessary to again recite at length the reasons given in Chicago, Wilmington and Vermilion Coal Co. *v.* People, *supra*, as to the necessity for requiring inspections of coal mines where men are employed. The act in question requires a certain number of inspections to be made annually, and these may be increased when
22 unforeseen conditions make the same necessary. A limitation of the number of inspections regardless of circumstances, or dependent solely on the number of men employed, or the size or shape of the mine, or its age, or any other one circumstance that occurs to us, would fritter away the benefits to be derived from the act and create a condition that might be productive of danger both to the safety of the mine and the lives of miners employed therein. The dipping of a fissure, by which gas may escape into the mine; the gathering of foul air in certain rooms therein, resulting from unknown causes, or the dangerous condition of the roof, may necessitate frequent inspections in the interest of safety to the mine and miners, which inspections would not be necessary where such conditions do not exist. Such causes and conditions cannot be foreseen. They may result from an extension of the work in the mine, from an explosion therein or in the ordinary blasting of coal, and from other causes resulting in the necessary manner of working the mine. When such conditions exist, inspection is necessary more often than when they are absent, and to attempt to lay down a rule by statute fixing the number of inspections would prevent a proper protection of operative miners, as required by section 29 of article 4 of the constitution, and would destroy the purposes of the act.

We have carefully examined the cases of Yick Wo *v.* Hopkins, 118 U. S., 256; Walch *v.* City of Denver, 53 Pac. Rep., 458, and City of Baltimore *v.* Radicke, 49 Md., 217, relied on by plaintiff in error, and find nothing to modify the views herein expressed.

The judgment of the circuit court of St. Clair county is affirmed.

Judgment affirmed.

23 And afterwards, to wit, on the 24th day of October, A. D. 1900, the following petition and order were filed in said cause:

In the Supreme Court of the State of Illinois.

THE CONSOLIDATED COAL COMPANY OF ST. Louis, Plaintiff in Error, *vs.* THE PEOPLE OF THE STATE OF ILLINOIS, Defendant in Error.	Error to the Circuit Court of St. Clair County.

To the honorable the judges of the Supreme Court of the United States:

Comes now the above-named plaintiff in error, by Charles W. Thomas, its attorney, and complains that in the record and proceedings had in said cause and also in the rendition of the judgment in said cause in the said supreme court of the State of Illinois on the 21st day of June, A. D. 1900, at a term of the said supreme court of the State of Illinois then being held at Springfield, whereby a certain judgment theretofore rendered against said plaintiff in error by the circuit court of St. Clair county, in said State, for the sum of one thousand and eighteen dollars and costs of suit, was in all things affirmed, manifest error hath happened, to the great damage of plaintiff in error.

Wherefore the said plaintiff in error, presenting herewith its assignment of error in due form, prays for the allowance of a writ of error, and for an order fixing the amount of bond in said cause to secure and cover costs, and for such other orders and process as may cause the said errors to be corrected by the said supreme court of the United States.

Dated this 22nd day of October, A. D. 1900.

CHARLES W. THOMAS,
Attorney for Plaintiff in Error.

The foregoing petition, as well as the assignment of errors therein mentioned and a bond in the penal sum of five hundred dollars, executed by said plaintiff in error, as principal, and The American Surety Company of New York, as surety, conditioned to
24 the effect that if said plaintiff in error, upon the allowance of a writ of error in said cause from the Supreme Court of the United States, shall make its plea good and answer all costs that shall be awarded against it, then said bond should be void, but otherwise to remain in full force and virtue, having been this day presented to me, and by me considered, it is ordered that said bond be approved, and that the writ of error prayed for be allowed.

Dated this 22nd day of October, A. D. 1900.

CARROLL C. BOGGS,
Chief Justice of the Supreme Court of the State of Illinois.

25 And, to wit, on the day last aforesaid, the following bond was filed in said cause:

Know all men by these presents that we, The Consolidated Coal Company of St. Louis, as principal, and American Surety Company of New York, as surety, are held and firmly bound unto the People

of the State of Illinois in the full and just sum of five hundred dollars, to be paid to the said People of the State of Illinois, their certain attorneys or legal representatives; to which payment, well and truly to be made, we bind ourselves, our successors and legal representatives, jointly and severally, firmly by these presents.

Sealed with our seals this 5th day of October, in the year of our Lord one thousand nine hundred.

Whereas lately, at a session of the supreme court of the State of Illinois, in a certain suit then pending in said court between The Consolidated Coal Company of St. Louis, appellant, and The People of the State of Illinois, appellee, a final judgment was rendered against the said appellant, and the said appellant having obtained a writ of error to reverse the judgment aforesaid, and a citation, directed to the said People of the State of Illinois, is about to be issued, citing and admonishing them to be and appear at the Supreme Court of the United States, to be holden at Washington:

Now, the condition of the above obligation is such that if the said Consolidated Coal Company of St. Louis shall prosecute its writ of error with effect, and shall answer all costs that may be awarded against it if it fails to make its plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

THE CONSOLIDATED COAL COMPANY OF ST. LOUIS,

[SEAL.] By GEO. S. AYER, *Its Vice-President.*

AMERICAN SURETY COMPANY OF NEW YORK,

By S. M. DODD, *Resident Vice-President.*

Attest: A. W. CARR, *Secretary.*

Attest: R. L. RINAMAN,
Resident Assistant Secretary.

Approved
CARROLL C. BOGGS, [SEAL.]
Chief Justice Supreme Court of Illinois.

26 STATE OF MISSOURI, }
City of St. Louis, } ss:

On this 5th day of October, 1900, before me came R. L. Rinaman, known to me to be the resident assistant secretary of the American Surety Company of New York, the corporation described in and which executed the annexed bond of the Consolidated Coal Company of St. Louis as surety thereon, and who, being by me duly sworn, did say that he resides in the city of St. Louis, State of Missouri; that he is the res. ass't secretary of the American Surety Company of New York and knows the corporate seal thereof; that said company is duly and legally incorporated under the laws of the State of New York and has complied with the provisions of the act of Congress of August 13, 1894, allowing certain corporations to be accepted as surety on bonds; that said company has also complied with the provisions of the laws of the State of Missouri & Illinois re-

lating to the business of surety companies in said State-; that the seal affixed to the annexed bond of the Consolidated Coal Company of St. Louis is the corporate seal of said American Surety Company of New York and was thereto affixed by order and authority of the board of directors of said company, and that he signed his name thereto by like order and authority as resident assistant secretary of said company; that he is acquainted with S. M. Dodd and knows him to be the resident vice-president of said company, and that the signature of said S. M. Dodd subscribed to said bond is in the handwriting of said S. M. Dodd and was thereto subscribed by order and authority of the said board of directors, and that the assets of said company, unincumbered and liable to execution, exceed its claims, debts, and liabilities of every nature whatsoever by more than the sum of $500,000.00.

R. L. RINAMAN.

27 Sworn to, acknowledged before me, and subscribed in my presence this 5th day of October, 1900.

My commission expires May 5, 1902.

H. G. CLEAVLAND, [SEAL]

Notary Public for the City of St. Louis, State of Missouri.

Endorsed on cover: File No., 17,974. Illinois supreme court. Term No., 489. The Consolidated Coal Company of St. Louis, plaintiff in error, *vs.* The People of the State of Illinois. Filed November 24th, 1900.

IN SUPREME COURT OF THE UNITED STATES.

October Term, A. D. 1900.

No. 489.

THE CONSOLIDATED COAL CO. OF ST. LOUIS,
Plaintiff in Error.
vs.
THE PEOPLE OF THE STATE OF ILLINOIS,
Defendant in Error.

In Error to the Supreme Court of Illinois.

STATEMENT.

In 1891 the General Assembly of Illinois enacted a statute with reference to the inspection of coal mines. It was amendatory of prior acts which have no bearing upon the question presented by this record. It divided section 11 of a prior act of 1879 into paragraphs and designated each paragraph by some letter, retaining the number of the amended section. Session Laws 1895, p. 252.

Section 11(a) of the amendatory act divided the State into seven inspection districts.

Section 11(b) makes it the duty of the Governor to appoint one inspector of coal mines for each of the seven districts of the State.

Section 11(c) prescribes the qualifications of inspectors and provides the oath to be taken and the bond to be given by them respectively.

Section 11(d) provides that any person, company or corporation, operating any coal mine in Illinois, shall be required to pay an inspection fee of not less than six nor more than ten dollars for each visit of inspection or investigation at a coal mine by an Inspector, such fee to be regulated by the class of the mine which shall be fixed by the Inspector and depend upon the length of time consumed and the expense necessarily incurred in the inspection of such mine, said fees to be paid quarterly to the Secretary of the Bureau of Labor Statistics and by him covered into the State Treasury to be held as a fund for the payment of Inspectors' salaries. It further provides that it shall be the duty of each Inspector, as often as he may deem it necessary and proper, and at least four times a year, to inspect each mine in his district. The salary of each Inspector is fixed at $1,800 a year and if the fund arising from inspection fees is insufficient to meet the charge, the deficiency is to be paid out of the Treasury. This section also contains other provisions not pertinent to the questions presented.

Section 11(e) provides that it shall be unlawful for any person, company or corporation to operate any coal mine in Illinois without first having complied with all the conditions and sanitary regulations required under existing laws and paying all inspection fees provided for in this section 11, and in case of refusal to pay the inspection fees, it is made the duty of the State's Attorney to proceed by injunction without bond to restrain the delinquent from operating or attempting to operate his mine or from carrying on a mining business.

In 1897 this section 11(e) was so amended as to apply

only to mines where more than five men are employed at any one time.

The above subdivisions are printed in full as an appendix hereto.

The sanitary regulations mentioned above, are those provided for by the general mining law of Illinois which is to be found in Chapter 93, Rev. Statutes of Illinois, of which the act above abstracted is now a part.

The plaintiff in error was the owner of certain coal mines in the Fourth, Fifth and Sixth Inspection Districts, in each of which more than five men were employed. Thirty-one of those mines were inspected between November 2, 1895, and June 26, 1899, by the several Mine Inspectors, as follows:

111 inspections at $6 each;

69 inspections at $8 each;

60 inspections at $10 each;

making an aggregate of $1,818 for inspection fees.

There were 853 coal mines in Illinois subject to inspection. The Inspectors are seven in number and the salary of each is $1,800 a year. The number of inspections required by law is four every year as a minimum, but the Inspectors may inspect or *investigate* the mines whenever they think it necessary or proper so to do. The total expense of inspecting all the mines is $12,600.

The plaintiff in error having refused to pay the inspection fees charged against it, an action was brought against it in the name of The People. The declaration is upon the statute, to which it makes reference, and the cause of action

is based solely upon the act above set out. A stipulation of facts was filed and judgment was given in the Circuit Court of St. Clair County against the plaintiff in error, which was defendant then. A motion in arrest of judgment was made, one of the grounds thereof being that the statute declared on contravened the Fourteenth Amendment to the Constitution of the United States. The motion was denied and judgment was entered against the defendant there for $1,818. A writ of error was prosecuted to the Supreme Court of Illinois, where the judgment of the Circuit Court was affirmed. This writ of error is sued out to review the action of the Supreme Court of Illinois. The errors assigned and relied upon are:

I. That the Supreme Court of Illinois erred in not reversing the judgment of the St. Clair Circuit Court, and

II. That said Supreme Court erred in holding to be valid and not repugnant to the Fourteenth Amendment to the Constitution of the United States the act of the General Assembly of Illinois sued on.

The main question raised for adjudication, is whether the said act, in so far as it gives to District Mine Inspectors an untrammelled discretion as to how often they will inspect and an unregulated discretion as to what fees they shall charge within the limits fixed by those acts, is in contravention of that provision of the Fourteenth Amendment to the Constitution of the United States forbidding any State to deprive any person of life, liberty or property without due process of law or to deny to any person within its jurisdiction the equal protection of the law.

A second question so raised is whether the act, as

amended in 1897, in so far as it discriminates as to penalties imposed upon persons engaged in the same business, and inflicts them upon some and not upon others, is a legitimate exercise of the police power.

A third question so raised is whether the act is an "inspection" law within the true meaning of that word, and in that sense which is required to make it a proper police regulation.

BRIEF.

The Fourteenth Amendment to the Constitution of the United States prohibits statutes which are capable of being executed arbitrarily and with discrimination, unequally and unjustly and without regard to a legal discretion.

Yick Wo v. Hopkins, 118 U. S. 256.

City of Baltimore v. Radecke, 49 Maryland 217.

Walsh v. City of Denver, 53 Pac. Rep. 458.

Amer. & Eng. Enc. Law, 2nd Ed. Vol. 6 p. 967.

And the constitutional validity of a law is to be tested, not by what has been done under it, but by what may, by its authority, be done.

Stuart v. Palmer, 74 N. Y. 183.

And while it is competent and proper for any State to exercise its police power for the protection of the health and morals of its people, every regulation made in the exercise of that power must be uniform as to the class upon

which it operates and leave no arbitrary discretion in executive officers as to what persons are to be included in the class, and no discretion to be exercised in the way of discrimination, against or in favor of any who are, by the regulation itself, placed in any particular class.

St. Louis & San Francisco R'y v. Mathews, 165 U. S. 1, at p. 27.

Jones v. Brim, 165 U. S. 180, at p. 184.

Minneapolis R'y Co. v. Beckwith, 129 U. S. 26.

Powell v. Pennsylvania, 127 U. S. 678, at p. 687.

Yick Wo v. Hopkins, 118 U. S. 256.

Barbier v. Connolly, 113 U. S. 27.

Amer. & Eng. Enc. Law, 2nd Ed. Vol. 6 p. 967 note 8.

Noel v. The People, Ill. 58 N. E. Rep. 616.

A statute which imposes penalties or punishments for its infraction upon one citizen, and allows another equally guilty to escape those penalties or punishments, is void, and no authorities are necessary to support this proposition.

Genuine inspection laws are upheld because it is their purpose and effect to protect the public health or insure the public safety, but a law, the evident purpose of which is to ascertain whether a statute has been disregarded, or to fix

the guilt or innocence of any citizen, or to obtain evidence against him, is not a proper inspection law, no matter what it calls itself.

People v. Comp. Gen. Transatlantique, 107 U. S. 59.

ARGUMENT.

MAY IT PLEASE THE COURT:

In view of the many decisions which have been made by this Court with respect to the effect of the Fourteenth Amendment upon the exercise of the police power inherent in the States, there is no longer any doubt as to what the true rule is.

For present purposes, it may be conceded that it was competent for the State of Illinois to provide for the inspection of coal mines by some uniform regulation, bearing equally upon all persons of the same class engaged in the business of mining coal in that State. The first contention is that the acts upon which this litigation is founded, do not bear equally upon all citizens of the same class who engage in that business, but that they vest a discretion in executive officers, capable of being used arbitrarily and with unjust discrimination. The general class which the statutes affect, is composed of all who operate coal mines. It might have been competent for the State, by its Legislative Department, to make several classes of mines subject to inspection, basing the dividing

line between the classes upon the size of the various mines, or the number of men employed therein, or upon some other just and apparent physical difference, but if this had been done, the rule would still apply, that all those in any class so constituted must bear equal burdens and not be subject or liable to discrimination in the execution of the law. If more burdens were to be imposed upon members of one class than were to be imposed upon members of another class, it was necessary, in order to avoid the prohibition of the Fourteenth Amendment, that the designation of the classes be made by the law itself and not left to the discretion of any executive officer, acting without the guidance of a definite rule laid down in the statute. Classes may be formed and defined by a law made in the exercise of the police power, but such a law is not valid where it leaves the classes to be formed and defined by an executive officer, and places diverse burdens upon classes so formed.

The statute under consideration here requires the Inspector to inspect each mine in his district as often as he deems it necessary and proper, and at least four times a year, and requires the mine owner to pay an inspection fee for each inspection, of not less than six dollars nor more than ten dollars, the fee to be regulated by the class of the mine, which shall be fixed by the Inspector and depend upon the length of time consumed and the expense necessarily incurred in the inspection. It further provides that any mine owner who employs more than five men and who fails to pay any inspection fees shall be enjoined, not only from operating the inspected mine, but from carrying on the mining business in the State of

Illinois. Under that statute, the discretion as to how often inspections shall be made is vested, without any sort of limit, absolutely in the Inspector. There is nothing to prevent him from inspecting a particular mine every day and making such a charge as he sees fit, within the limits set by the statute. No rule is given by the law which can guide him and protect the mine operator from unjust discrimination. He is charged with the duty of dividing the mines into classes, and the only guide given him by the law is a general provision that the fees shall depend upon the length of time consumed in the inspection and the expense necessarily incurred, so that the same mine might, on three several occasions, be in three different classes and subject to three different charges, in the discretion of the Inspector. There is no provision that all mines which require a given time in which to be inspected, shall be subject to one charge and all which require another time shall be subject to another charge. Nor is there any definite rule or regulation given by the statute under which the Inspector and the mine owner would both know in what class the mine should be considered.

The complaint therefore is two-fold. The law makes the number of inspections entirely discretionary with the Inspector and it devolves upon him the duty of classification which the Legislature ought to have performed itself.

It is apparent that there could be no well founded complaint as to the number of inspections, if each inspection were not followed by a charge upon the mine owner, but being so followed, it is equally apparent that the Inspector, being governed by nothing but his own inclination in that

regard, could inspect a mine owner out of his business. *There is no limit set to the number of fees* he may collect under the law. He may inspect one mine four times a year and another two hundred and fifty times. The size of the mine, the number of men employed, the condition of the *stratum* of coal or of the roof of the mine, the tendency to the development of noxious gases—in short, the necessity for inspection has no relation to the acts of the Inspector. It rests with him, without any reference to any physical conditions, to say how often he will inspect, and the mine owner must pay whatever fee he sees fit to charge from six to ten dollars for each inspection, or quit his business.

It is not material whether, in any given case, the discretion given by a statute to an executive officer is abused: the prohibition of the Fourteenth Amendment is directed against the use of discretion and not against its abuse. A law which makes it possible to discriminate unjustly is void, because the citizen is guaranteed a government of law, as distinguished from a government of men. He has a right to know, from the law itself, what duties he must perform, what privileges he may exercise and what burdens he must bear. The mere fact that he may be discriminated against by an executive officer, necessarily deprives him of the equal protection of the law to which he is entitled.

The Fourteenth Amendment refers, not to what has been done under any given statute, but to what might be done. Nothing need be considered but the statute itself, although this Court has examined the acts of the executive officers to ascertain the real nature of the regulation complained of. Such examination is not necessary in this case. The

defect is apparent upon the face of the enactment. In the case of *Yick Wo v. Hopkins*, 118 U. S. 356, this Court cites with approval the case of *City of Baltimore v. Radecke*, 49 Maryland 217. In that case Radecke, having a permit so to do from the Mayor and Council of Baltimore, erected a steam engine in the city. The permit contained a condition that Radecke should remove the engine after six months notice to that effect from the Mayor. There was notice and refusal to conform to it, and a suit was brought to recover the penalty prescribed by the ordinance. A Bill in Equity was filed by Radecke to restrain the prosecution of the suit. Speaking of the ordinance in relation to the use of steam engines, the Court of Appeals of Maryland said:

> "It does not profess to prescribe *regulations* for their construction, location or use, nor require such precautions and safeguards to be provided by those who own and use them as are best calculated to render them less dangerous to life and property, nor does it restrain their use in box factories and other similar establishments within certain defined limits, nor in any other way attempt to promote their safety and security without destroying their usefulness. But it commits to the unrestrained will of a single public officer the power to notify every person who now employs a steam engine in the prosecution of any business in the city of Baltimore, to cease to do so, and, by providing compulsory fines for every day's disobedience of such notice of order and removal, renders his power over the use of steam in that city practically absolute, so that he may prohibit its use altogether. But if he should not choose to do this, but only to act in particular cases, there is nothing in the ordinance to guide or control his action. It lays down no *rules* by which its *impartial execution* can be secured or partiality and oppression prevented."

The Supreme Court of Illinois meets the difficulty with the argument *ab inconvenienti*. It seems difficult to lay down any definite rule in a statute, and therefore discretion and the power to discriminate must be vested in the executive officer. This is a fair statement of the position taken by that learned Court, as will be seen from a consideration of the able opinion delivered by Mr. Justice Phillips, printed in the Record. (Record page 13.) It is submitted that this position, even if correct as a matter of fact, is unsound. Nor does the suggestion, made in the opinion, that if there should be any unjust discrimination, it could be corrected in the Courts, suffice to meet the prohibition of the Fourteenth Amendment. That amendment forbids any State to deny any person in its jurisdiction the equal protection of the law. Before this statute was enacted that protection existed—after it was enacted that protection was withdrawn and therefore denied. It is the equal protection which the law of the land gives to every citizen, that is guaranteed by the amendment. Whenever a State substitutes for the equal protection of that law, an executive discretion as to how and when any given statute may be executed, the citizen is no longer protected by the law. Being no longer so protected, the equal protection of the law is denied him. The law of the land is his shield, and he is not to be deprived of it under any pretense whatever. He cannot be left unprotected by law, no matter how much or how little he may be protected by executive officers. It is a government of equal law which is guaranteed to the citizen by the Fourteenth Amendment, and not a government of men, no matter how good those men may be. The equal protection of the law is an existing, affirmative condition,

and therefore the amendment does not provide that every State shall see to it that every person in its jurisdiction has the equal protection of the law, but that no State shall deny such protection, or, in other words, negative or deny an existing right.

But it may be suggested that the learned Supreme Court of Illinois is mistaken as to the possibility of prescribing any definite and fixed rules for the inspection of coal mines. A classification is not only feasible, but easy to make, as appears from a glance at the statutes under consideration. The amendatory act of 1897, which excludes from the operation of the penalties of the statute all mines in which not more than five men are employed, shows that it is not as difficult to classify coal mines as the learned Supreme Court of Illinois supposes it to be. If the Legislature of Illinois could so easily distinguish between the mines subjected to penalties and those not so subjected, by putting into one class all those in which not over five men were employed, and thus officially recognize this method of classification as a proper one for that purpose, it is difficult to see what obstacle there was to a like system of classification as to all the mines for inspection purposes.

It would not strengthen the acts under consideration if it were to be determined that, in directing the Inspectors as to what the inspection fee should be and requiring it to be graded in accordance with the time consumed and the expense incurred in making the inspection, the law laid down a sufficiently distinct rule or regulation, because if this were so, the rule would only apply to the fee to be charged for each inspection and have no application to the

number of fees which might be charged, that matter being left entirely to the discretion of the Inspector. It is not the amount of any single inspection fee that is complained of, it is the fact that under this law an Inspector could, if he saw fit, inspect a given mine frequently, uselessly and unnecessarily and oppress its owner by the imposition of an unequal burden upon him. He could discriminate against any one who displeased him, or in favor of any one to whom he was friendly. As was said by the Court of Appeals of Maryland in the Radecke case, *supra:* his action or non-action might proceed from enmity or prejudice, from partisan zeal or animosity, from favoritism and other improper influences and motives easy of concealment and difficult to be detected and exposed, and it is unnecessary to suggest or comment upon the injustice capable of being brought under cover of such a power, for that becomes apparent to every one who gives to the subject a moment's consideration.

One mine in Illinois owned by a friend of the Inspector might be inspected four times a year, while one in like condition owned by an enemy might be inspected a hundred times. The friend would pay twenty-four dollars into the State Treasury and the enemy anywhere from six hundred to a thousand dollars, or even more than that if the Inspector saw fit to make more inspections.

The Supreme Court of Illinois in a very late case has itself furnished a notable authority against the conclusion it reached in this case. In the case of *Noel v. The People*, unreported—decided Oct. 19, 1900, and published in N. E. Reporter, Vol. 58, p. 616, the Legislature had passed an

act regulating the practice of pharmacy in Illinois. It provided for the registration of pharmacists by the Board of Pharmacy and made it a penal offense for any person not a registered pharmacist to open or conduct any pharmacy, dispensary, drug store, apothecary shop or store for the purpose of retailing, compounding or dispensing drugs, medicines or poisons, but providing that nothing in the act contained should be construed to prevent the sale of patent and proprietary medicines and domestic remedies by retail dealers as thereinafter provided. The provision referred to was to the effect that the Board of Pharmacy might, in its discretion, issue permits to sell the usual domestic remedies and proprietary medicines under such restrictions as the Board might deem proper. In commenting upon this act the learned Judge who delivered the opinion of the Court used the following language:

> "The official discretion conferred upon the Board is unregulated and not subjected to any permanent provisions operating generally and impartially. No conditions are prescribed upon which a permit authorizing the sale of the usual domestic remedies and proprietary medicines is to be issued. A law which thus invests any board or body of officials with a discretion which is purely arbitrary, and which may be exercised in the interest of a favored few, is invalid. It makes unjust discriminations between persons coming within the same class. * * * The Board is thus authorized to confer a privilege upon one person, firm or corporation, and to deny the same privilege to another person, firm or corporation, and is not required to be governed in doing so, by any fixed rules or regulations, but may be moved thereto by its own caprice or favoritism. Laws thus conferring discretionary and arbitrary power are not only invalid for the reasons already

stated, but amount, in effect, to a delegation by the Legislature, of its legislative functions to the board of officials in question. The Legislature undoubtedly has the power, in the interest of the public health, to pass a law regulating the disposition of these domestic remedies and proprietary medicines: but instead of doing so, in section 8 it has abdicated its own power upon the subject, and conferred such power upon the Board of Pharmacy, to be exercised according to the discretion of the Board."

Before the passage of the amendatory act of 1897, all operators of coal mines in Illinois, without reference to the size of these several mines, were compelled to submit to the inspection of their property and to pay the inspection fees charged by the inspectors under certain severe penalties, which were prescribed by the statute. Any mine owner who neglected or refused to pay the inspection fees might be summarily compelled to close his mine and go out of the mining business. The act of 1897 amended the prior act by limiting all the penalties of the law to mine owners who employed more than five men. Mines in which five men or less were employed, were still left subject to inspection, and subject to the payment of inspection fees, and subject to all the general provisions of the law with respect to sanitary regulations, but they were relieved from the penalties theretofore imposed upon all who violated the law. It is contended that this amendatory act of 1897, of itself, made the whole inspection law invalid.

It may be urged that this action is not one to enforce any penalty provided by the act, and that as long as there is no attempt to enforce the penal provision, the question whether the act is valid or invalid on the ground that, as amended, it releases one from a penalty to which it holds another, cannot properly be raised. The amendatory act, by its express terms, makes it "unlawful" for one citizen to operate a coal mine when he has failed to pay inspection fees, while another citizen, who has also failed to make payment of the same fees, may lawfully proceed with the prosecution of his mining busidess. It would seem that a statute of this description is void not only as to the penal portion of it, but totally void, because the penalty enters into and pervades the body of the statute and affects all of its provisions. A payment demanded of one citizen under severe penalties from which another citizen in like circumstances is relieved, is unlawfully demanded.

The act in question is not an inspection law in the sense that its purpose is the preservation of the public health or public safety; and this for two reasons. In the first place it relates to a single class of people who constitute but a small fraction of the public; and in the second place its purpose is merely to investigate and punish, and in this government, a citizen, engaged in a lawful business cannot be charged with the cost of the investigation of that busi-

ness by public officers, made for the purpose of laying a foundation for a prosecution.

Under the act in question here, the inspectors have no duties except to investigate and ascertain whether or not the operators of coal mines are obeying the general statute enacted with reference to the safety of their employees. Section 11(c) speaks of visits of inspection *or investigation* and imposes a charge for each visit.

The inspection of appliances as a means of detecting breaches of the law, is no part of a just police regulation. All the inspection laws that have been sustained by the Courts are such as tended to protect the public by preventing a breach of the law. The act under consideration shows upon its face that the inspectors are simply provided for the purpose of seeing whether the law has been violated and then taking steps to have penalties inflicted. They have no duty to prevent harm to the public. A quarantine inspector, a wheat inspector, a seed inspector referred to in decided cases, all acted before injury could be inflicted, and their sole province was to prevent the injury to the public health, morals or safety that was threatened. They were a proper part of a preventive plan. But these coal mine inspectors, by the terms of the act itself, are charged with no duty but that of ascertaining whether the law has been violated and taking steps to punish the violation. It is true they are to see that every necessary precaution is taken to insure health and safety, but when the general law governing the operation of coal mines in Illinois, is consulted, it will be discovered that it provides for all the

things that constitute "necessary precautions" and the provision of the act in question is only equivalent to saying that the inspectors shall see to the enforcement of the law. They have no power to remedy any evil they may find. They have no power to prevent, they have only power to see to the punishment. All inspectors appointed under a proper police regulation and as a part thereof, have power to prevent the public injury. That is their duty and the purpose of their existence. It is this prevention only that makes an interference with natural rights at all admissible. It is the preservation of the public safety and health and consequently the prevention of public danger and sickness that alone support the exercise of the police power. If the inspector in a quarantine case had no power except to inspect a vessel, and then proceed against the master if he landed the passengers or the cargo, he would not be preserving the public health and would be no proper part of a police regulation.

It might be argued that the Legislative Department could lawfully provide these inspectors for the very purpose of ascertaining whether the law had been violated, but if that were conceded, it would not meet the difficulty. The complaint is not so much against the existence of the inspectors as it is against their charges. If they are public officers, whose duty it is to ascertain who is violating the law, they must be paid by the public. The Legislature cannot assume that certain persons will violate the law and proceed to charge them with the cost of ascertaining

whether the legislative assumption in that regard was well founded or not.

But there is another ground for the contention that the act complained of is not a proper inspection law. It creates a fund out of which the salaries of the Inspectors are paid. These salaries are the only claims against that fund. Perhaps there could have been no just objection to a law which required contributions from mine owners to a fund to pay Inspectors, if such contributions were guaged by the size of the several mines, or the number of men employed therein, or their gross output. In such case the number of inspections would have been immaterial. The contributions required would have been measured by some physical condition, and all who were called upon to make them would have known their extent beforehand. As the law now is, the fund to be raised is seven times $1,800, or $12,600. There are 853 mines to be inspected. The minimum charge is $6, and if each mine is inspected four times a year, which is the least number required by the statute, at the minimum charge of $6 for each inspection, the fund created would amount to $21,772. But there is no limit to the number of inspections, and they could be made as often as it is physically possible to make them. If the Inspectors in each district deem it proper to inspect every mine therein once a week they could do so under this law, and raise a fund of $266,136 by charging only the minimum fee. All this, except the $12,600 necessary to pay the Inspectors, would,

under the law, have been paid into the State Treasury to the relief of the general tax-payers of the State.

It is contended that a statute, in pursuance of which a large sum, or any sum of money, is collected from one class of citizens for the benefit of the public at large, without resort to any rule of uniformity, deprives those citizens of their property without due process of law. Here the mine owners, or such of them as the Inspectors may select for that purpose, are required to raise a fund which the statute itself limits to $12,600 a year, but when the methods provided by the statute for creating this fund are examined, it is found that their use results in raising more money than the fund needs, and that it is possible under the law to raise a vast sum of money by inspecting coal mines, and turn it into the State Treasury for the benefit of the general tax-payers of the State. This is not due process of law.

It is respectfully submitted that the judgment of the Supreme Court of Illinois ought to be reversed with directions to reverse the judgment of the St. Clair Circuit Court.

CHARLES WAIT THOMAS,
Attorney for Plaintiff in Error.

APPENDIX.—LAWS OF ILLINOIS.

Act of 1895 and Amendment of 1897.—Law 1895, P. 252. Laws 1897, P. 269.

Section 11(a)—This State shall be divided into seven inspection districts, as follows: The first district shall be composed of the counties of Boone, McHenry, Lake, DeKalb, Kane, Dupage, Cook, Lasalle, Kendall, Grundy, Will, Livingstone and Kankakee. The second district, the counties of Jo Daviess, Stephenson, Winnebago, Carroll, Ogle, Whiteside, Lee, Rock Island, Henry, Bureau, Mercer, Stark, Putnam, Marshall, Peoria and Woodford. The third district, the counties of Henderson, Warren, Knox, Hancock, McDonough, Schuler, Fulton, Adams and Brown. The fourth district, the counties of Tazewell, McLean, Ford, Iroquois, Vermilion, Champaign, Piatt, DeWitt, Macon, Logan, Menard, Mason and Cass. The fifth district, the counties of Pike, Scott, Morgan, Sangamon, Christian, Shelby, Moultrie, Douglas, Coles, Cumberland, Clark, Edgar, Montgomery, Macoupin, Greene, Jersey and Calhoun. The sixth district, the counties of Monroe, St. Clair, Madison, Bond, Clinton, Fayette, Marion, Effingham, Clay, Jasper, Richland, Crawford and Lawrence. The seventh district, the counties of Washington, Wayne, Edwards, Wabash, White, Hamilton, Franklin, Perry, Randolph, Jackson, Williamson, Saline, Gallatin, Hardin, Pope, Johnson, Massac, Union, Alexander and Pulaski.

Section 11(b)—The Governor shall upon a recommendation of a board of examiners elected for that purpose, composed of two practical coal miners, two coal operators, and one mining engineer, to be appointed by the Bureau of Labor Statistics of this State, all of whom shall be sworn to a faithful discharge of

their duties, appoint seven properly qualified persons to fill the offices of inspectors of coal mines in this State (being one inspector for each district provided for in this act), whose commissions shall be for the term of two years, but they shall at all times be subject to removal from office for neglect of duty or malfeasance in the discharge of duty, as hereinafter provided for.

SECTION 11(c)—The inspectors so appointed shall have attained the age of thirty years, be citizens of this State and have a knowledge of mining engineering sufficient to conduct the development of coal mines and a practical knowledge of the methods of conducting mining for coal in the presence of explosive gases, and of the proper ventilation of coal mines. They shall have had a practical mining experience of ten years, and shall not be interested as owner, operator, stockholder, superintendent or mining engineer of any coal mine during their term of office, and shall be of good moral character and temperate habits, and shall not be guilty of any act tending to the injury of miners or operators of mines during their term of office. They shall provide themselves with the most approved modern instruments for carrying out the intention of this act. The inspectors, before assuming the duties of their several offices, shall take an oath of office, as provided for by the Constitution, and shall be required to enter into a bond to the State in the sum of five thousand dollars ($5,000) with sureties to be approved by the Governor, conditioned upon the faithful performance of their duties in every particular, as required by this act, said bond, with the approval of the Governor endorsed thereon, together with the oath of office shall be deposited with the Secretary of State.

SECTION 11(d)—Any person, company or corporation operating any coal mine in this State shall be required to pay an inspection fee of not less than six

dollars nor more than ten dollars for each visit of inspection or investigation of a coal mine by a State Mine Inspector, such fee to be regulated by the class of the mine, which shall be fixed by the Inspector and depend upon the length of time consumed, and the expense necessarily incurred in the inspection of such mine, and such fees shall be paid quarterly by the person, company or corporation operating the mine inspected to the Secretary of the Bureau of Labor Statistics and by him covered into the State treasury, to be held as a fund for the payment of salaries of State Mine Inspectors, as herein provided. It shall be the duty of each Inspector, as often as he may deem it necessary and proper, and at least four times a year, to inspect each and every mine in his inspection district. Each inspection shall be certified to by the pit committee and mine manager of said mine. It shall be the duty of each Inspector to keep a detailed record of all inspections and of all fees for such inspections, and he shall file a copy of the same with the Secretary of the State Bureau of Labor Statistics quarterly, between the first and fifteenth days of the following months: October, January, April and July, which reports shall be published annually as a part of the regular report of the State Bureau of Labor Statistics. The Inspectors provided for in this act shall receive as full compensation for their services the sum of eighteen hundred dollars each per annum, to be paid quarterly out of such funds in the State treasury as may be received for inspection fees: *Provided, however*, that in the event of such fees being inadequate to compensate the Inspectors in the amount provided herein, the deficiency in the salaries shall be paid out of any moneys in the State treasury not otherwise appropriated. The Mine Inspector shall be required to post up in some conspicuous place, at the top of each mine visited and inspected by him, a plain statement of the condition of said mine, showing what, in his judgment, is necessary for the better protection of the lives and health of per-

sons employed in said mine; such statement shall give the date of inspection and the number of hours spent in the inspection, also the date of the last previous inspection, and shall be signed by the Inspector and the check weighman, and, if there be no check weighman, employed by the miners, then said statement shall be signed by the weighman at the mine: *provided*, that county boards may appoint an assistant county inspector in counties producing eight hundred thousand tons of coal or more per annum, upon the written request of the district mine inspector, and who shall act under the direction of the district mine inspector and shall receive not less than three dollars and not more than five dollars per day for time actually employed, to be paid out of the county treasury; such assistant inspector shall be one who has received a mine manager's certificate for (from) the Board of Mine Examiners of this State.

SECTION 11(e)—It shall be unlawful for any person, company or corporation to operate any coal mine in this State without first having complied with all the conditions and sanitary regulations required under existing laws and paying all inspection fees provided for in this section, and in case of the refusal of any person, company, corporation, owner, agent or operator to pay said inspection fees, after assuming to operate a coal mine, it shall be the duty of the State's Attorney of the county, or any other attorney, in case of his refusal promptly to act, to proceed on behalf of the State against said person, company, corporation, owner, agent or operator of said mine, by injunction, without bond, to restrain said person, company, corporation, owner, agent or operator from continuing or attempting to continue to operate said mine or carry on a mining business.

In 1897 Section 11(e) was amended so as to read as follows: the words in italics being inserted into the paragraph

as it was originally enacted. Session Laws 1897, p. 269.

SECTION 11(e)—It shall be unlawful for any person, company or corporation to operate any coal mine in this State, *where more than five men are employed at any one time*, without first having complied with all the conditions and sanitary regulations required under existing laws and paying all inspection fees provided for in this section, and in case of the refusal of any person, company, corporation, owner, agent or operator to pay said inspection fees, after assuming to operate a coal mine, it shall be the duty of the mine inspector in said district, through the State's Attorney of the county, or any other attorney, in case of his refusal to promptly act, to proceed on behalf of the State against said person, company, corporation, owner, agent or operator of said mine by injunction, without bond, to restrain said person, company, corporation, owner, agent or operator from continuing or attempting to cointnue to operate said mine or carry on a mining business.

In the Supreme Court of the United States.

OCTOBER TERM, A. D. 1901.

THE CONSOLIDATED COAL COMPANY OF ST. LOUIS, *Plaintiff in Error,* vs. THE PEOPLE OF THE STATE OF ILLINOIS, *Defendant in Error.*	NO. 197. In Error to the Supreme Court of Illinois.

MAY IT PLEASE THE COURT:

The plaintiff in error very respectfully petitions the Court to grant a re-hearing of this cause.

The Court seems to have been impressed by the consideration that the record shows that the plaintiff in error does not appear to have suffered any injury. This is true, but it is conceived that the question whether or not a particular act is in contravention of the Constitution in that it measurably creates a government of men instead of a government of law, or provides that the property of the citizen may be taken without due process of law, is in no wise affected by the manner in which that law is administered. If the law is void it cannot be made valid by anything done in pursuance of its provisions. It is just as invalid when so executed as to favor a litigant, as it would be if it were executed so as to oppress him.

The Court says, in the last clause of its opinion:

"It is also true that the fees for each inspection shall not be less than six dollars nor more than ten dollars, and that such fees shall be regulated by the class of the mine, which shall be fixed by the inspector and depend upon the length of time consumed and the expense necessarily incurred in the inspection of such mine. Objection is made upon the ground that it gives to each mining inspector not only the right to determine the number of times each mine shall be inspected, but the fees to be charged in each case. If his discretion were unlimited in this direction, and the fees were retained by himself, there would be much force in the suggestion; but the truth is that the amount of the fee must be in each case somewhere between six dollars and ten dollars, and must be paid to the Secretary of the Bureau of Labor Statistics, and by him covered into the State treasury, to be held as a fund for the payment of the salaries of the mining inspectors. Each inspector provided for by the act receives for his services $1,800 per annum, to be paid quarterly out of the funds of the State treasury received for the inspection fees, and in the event of such fees being inadequate to compensate such inspectors in the amount provided for herein, the deficiency of the salaries shall be paid out of the money in the State treasury not otherwise appropriated. It appears, then, *first*, that the State inspector receives a regular salary, neither increased nor diminished by the number of inspections or the amount paid for each inspection; and, *second*, that he receives such salary directly from the Bureau of Labor Statistics and not from the fees paid to him therefor. As his compensation is dependent neither upon the number of his visits nor upon the amount of his fees, it is difficult to to see how he would gain by multiplying one or magnifying the other."

Does the fact that the discretion of the inspector is thus limited as to inspection fees really have any bearing upon the question under discussion? If it does, then it follows that the limit within which the discretion may be exercised, is alone to be considered in passing upon the validity of the act, and the question would be whether or not the limit is reasonable, or, pushed to its ultimate conclusion, whether the sum taken from the citizen without due process of law is great or small. If an unlimited discretion as to fees for and times of inspection vested in the inspector, would render the act invalid because, by its exercise, the citizen

would be deprived of his property without due process of law, or be denied the equal protection of the law, how would the limiting of that discretion avoid that result? And where is the limit to be? The maximum charge may as well have been twenty or fifty or one-hundred dollars, as ten, and there is no maximum fixed by law for the number of inspections. As to the number of inspections there is absolutely no limit, and in respect of that, the discretion of the inspector is wholly untrammeled. The fact that there is no limit to the number of inspections has the effect of removing the limit placed upon the fees. This fact seems to have been overlooked by the Court, as the opinion, as quoted, discusses only the discretion of the inspector as to fees to be charged and conceives it to be confined to a narrow range.

It is true that the salary of the inspector is fixed by law and that none of the inspection fees go to him and he would gain nothing by increasing the number of inspections or the amount of the fees to be charged, but to what degree does that fact affect the validity of the statute? One temptation to favor or disfavor particular mine owners is removed but many others remain. The fact cited by the Court, that the mines of this plaintiff in error have not been inspected as frequently as they ought to have been or as frequently as the law requires, is an example of the abuse of a discretion which ought not to be reposed in an administrative officer. But the question whether the discretion has been abused or not abused seems wholly foreign to that in issue. The question seems to be whether or not the law vests a discretion which is capable of being abused. If it does, it seems clear that it denies to the citizen the equal protection of the law.

But aside from that, the statute takes the property of the citizen without due process of law. Does it make any difference whether the great excess of fees over expenses, provided for by the law, are paid to the inspectors or into the State Treasury? Has the State any right to exact large sums of money from its citizens under the guise of inspection fees and turn that money into its treasury? The Supreme Court of Illinois, in the case of *The People v. Harper*, 97 Ill. 357, which involved a merely collateral inquiry as to the validity of an act providing for the inspection of grain, sustained the law, which provided that inspection charges should be "regulated in such a manner as will, in the judgment of the commissioners, produce sufficient revenue to meet the necessary expenses of the service of inspection *and no more.*" In that case the amount of the charges was not fixed by law as it is in this case. Here the total expense is ascertained and the minimum amount required to be raised under the law is almost twice as much as the expense, while the maximum which might be raised is left to the imagination alone. It is practicable, as was pointed out on the hearing, to raise by these inspections a fund of over $200,000 a year to meet a fixed charge of $12,600. A statute under which these results could be reached, does not seem to be one which avoids the complaint that it provides for the taking of the property of the citizen without any due process of law. Nor does the provision of the act to the effect that inspectors "shall not be guilty of any act tending to the injury of miners or operators of mines during their term of office" have any tendency to meet the objections made. It is apparent that this provision does not hinder inspectors in the perform-

ance of duties actually prescribed by the act itself. Who is to decide whether a given act of the inspector will injure the operator or the miners? Manifestly the inspector himself because the law names no acts which he may not commit. The validity of the act can only be determined by its definite provisions. It is not unconstitutional in one case and constitutional in another. The provision alluded to does not prevent the assessors from raising at least $21,772 to meet an expense of $12,600, which the law specially enjoins them to do, nor does it in any manner limit the exercise of the inspectors discretion as to the number of inspections that may be made. The Court would not say that the law is valid in one case because it thought the number of inspections not excessive, and invalid in another because it deemed the number of inspections unreasonable.

And even if the words quoted should be thought to have any legal effect whatever, the Court will observe that the law provides no remedy for any injurious act the inspector may commit, except his removal. There is no provision for righting, in any manner, any wrong he may do. If the act be held to say in effect, that the inspector must not, in enforcing the law wrongfully deprive any citizen of his property (although the law affords him the means of doing so), and if he does that thing he may be removed from office, this gives the citizen no remedy. The property so taken is turned over to the State. The punishment of the inspector will in no wise help the case of him whose money has been unlawfully exacted.

These considerations, thus briefly stated, are thought to

justify the plaintiff in error, in very respectfully moving the Court to grant a re-hearing of this cause.

CHARLES W. THOMAS,
Attorney for Plaintiff in error.

I, Charles W. Thomas, attorney for Plaintiff in error in the above entitled cause do hereby certify that in my opinion the above and foregoing petition is well founded and states good grounds for a rehearing of the said cause and that the same is made and filed therein in good faith.

Charles W. Thomas

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1901.

No. 197.

THE CONSOLIDATED COAL COMPANY OF ST. LOUIS, *Plaintiff in Error.* *vs.* THE PEOPLE OF THE STATE OF ILLINOIS, *Defendant in Error.*	*In Error to the Supreme Court of Illinois.*

STATEMENT.

The statement of facts made by counsel for plaintiff in error is a fair one and clearly submits the issues here involved for the consideration of the Court. It is therefore unnecessary that an additional statement should be made.

It is insisted that the acts of the legislature of Illinois in relation to the inspection of coal

mines by State mine inspectors, and providing for the payment of fees therefor by the mine owners is repugnant to the Fourteenth Amendment to the Constitution of the United States.

Under the assignment of error counsel submits the following questions:

1. Whether the act of the legislature of Illinois in so far as it gives to district mine inspectors untrammeled discretion as to how often they will inspect, and an unregulated discretion as to what fees they will charge within the limits fixed by that act, violates the provisions of the Fourteenth Amendment to the Constitution forbidding any state to deprive any person of life, liberty, or property without due process of law, or to deny to any person within its jurisdiction the equal protection of the law.

2. Whether the original act, as amended in 1897, in so far as it discriminates as to penalties imposed upon persons engaged in the same business, and inflicts such penalties upon some and not upon others, is a legitimate exercise of police power.

3. Whether the act is an inspection law within the true meaning of that word and in that sense which is required to make it a proper police regulation.

BRIEF OF AUTHORITIES AND POINTS.

Due Process of Law.

"By the law of the land is most clearly intended the general law, which hears before it condemns; which proceeds upon inquiry and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty and property and immunities under the protection of the general rules which govern society. Every thing which may pass under the form of an enactment is not law of the land."

Brannon on the 14th Amendment, p. 140.
Dartmouth College Case, 4 Wheaton, 581.

Kent says, "The better and larger definition of due process of law is that it means law in its regular course of administration through the courts of justice."

2 Kent's Com., 13.

Equal Protection of Laws.

State legislation is not obnoxious to the provision of the Fourteenth Amendment to the Constitution of the United States if all persons subject to it are treated alike under similar

circumstances and conditions in respect both to the privileges conferred and the liabilities imposed.

6 Amer. and Eng. E. L., p. 967.

And when legislation applies to particular bodies or associations, imposing upon them additional liabilities, it is not open to the objection that it denies to them the equal protection of the laws, if all persons brought under its influence are treated alike under the same conditions.

Missouri Pac. Ry. Co. vs. Mackey, 127 U. S., 209.
Minneapolis, etc. vs. Herrick, 127 U. S., 210.
Walston vs. Nevin, 128 U. S., 578.
6 A. and E. E. L., 968.

A statute being general in its application, embracing all persons under substantially like circumstances, and not being an arbitrary exercise of power does not deny to the persons upon whom it operates the equal protection of the laws.

Loew vs. Kansas, 163 U. S., 81, 88.
Duncan vs. Missouri, 52 U. S., 377.
Jones vs. Brim, 165 U. S., 184.

Illustrations.

A municipal ordinance prohibiting washing and ironing in public laundries within defined territorial limits, from 10:00 o'clock at night to 6:00 o'clock in the morning, is a purely police regulation, within the competency of a municipality possessed of the ordinary powers. The Fourteenth Amendment to the Constitution of the United States does not impair the police power of a state.

Barber vs. Connolly, 113 U. S., 27.

A statute of a state provided that every railroad corporation owning or operating a railroad in the state, shall be responsible in damages to the owner of property injured or destroyed by fire, communicated directly or indirectly, by locomotive engines upon its railroad, and also provided that it shall have an insurable interest in the property upon the route of its railroad, and may procure insurance thereon in its own behalf. The Supreme Court of the United States, Justice GRAY, delivering the opinion of the Court, held:

> "The statute is a constitutional and valid exercise of legislative power of the state, and applies to all railroad corporations alike.

> Consequently, it neither violates any contract between the state and the railroad company, nor deprives the company of its property without due process of law, nor yet denies to it the equal protection of the laws."

St. Louis & San Francisco Ry. Co. vs. Mathews, 165 U. S., 1.

A statute of the State of Pennsylvania forbidding the manufacture and sale of oleomargarine, was held by the Supreme Court of the United States not to conflict with the Fourteenth Amendment to the Constitution. The Court says:

> "The statute places under the same restrictions, and subjects to the same burdens all who manufacture, or sell, or offer for sale, or keep in possession to sell, the articles embraced in its prohibitions, thus recognizing and preserving the principle of equality among those engaged in the same business."

Powell vs. Pennsylvania, 127 U. S. 687.

A provision of the Code of Iowa, section 1289, which authorizes the recovery of double the value of stock killed, or damages thereto, by a railroad when the injury took place at a point on the road where the corporation had a

right to erect a fence and failed to do so, when it was not occasioned by the wilful act of the owner or his agent, is not in conflict with the Fourteenth Amendment to the Constitution of the United States, either as depriving the company of property without due process of law, or as to denying to it the equal protection of the laws.

Barber vs. Connolly, 113 U. S., 27.
Missouri Pacific Ry. Co. vs. Humes, 115 U. S., 512.
Minneapolis Ry. Co. vs. Beckwith, 129 U. S., 27.

An ordinance making it unlawful to establish a public laundry without a certificate from the health officer and one from the fire wardens that the premises are in proper condition and that the business can be safely carried on with respect to the sanitary condition of the neighborhood, and prohibiting the doing of any business between the hours of 10:00 o'clock a. m. and 6:00 p. m. on Sunday, does not deny the keeper of a public laundry the equal protection of the laws.

Ex Parte Moynier, 65 Cal., 33.

Police Power of the State.

The Fourteenth Amendment to the Constitution does not limit the subjects in relation to which the power of the State may be exercised for the protection of its citizens.

Barber vs. Connolly, 113 U. S., 27.
Missouri Pacific R'y vs. Humes, 115 U. S., 512.
Minneapolis R'y Co. vs. Beckwith, 129 U. S., 27.
Powell vs. Pennsylvania, 127. U. S., 678.
St. L. & S. F. R'y Co. vs. Mathews, 165 U. S., 1.
Jones vs. Brim, 165 U. S., 180.
Davis vs. Mass., 167 U. S., 43.

Classification of Subjects of Police Power.

Classification of persons and things subject to the operation of the police power of the State is not inimical to the provisions of the Fourteenth Amendment to the Federal Constitution. While the object of the Fourteenth Amendment in respect to citizenship was to preserve equality of right and to prevent discrimination between citizens, it does not follow that because one man of one class happens to be treated by law differently from another in another class that the principle of equality is violated. It

only requires that the same means and methods be applied impartially to all the constituents of a class, so that the law shall operate equally and uniformly upon all persons in similar circumstances.

Brannon on 14th Amdt., 323.
Ky. R. R. Tax Cases, 115 U. S., 321.

The Fourteenth Amendment prescribes no rigid equality, and permits to the wisdom and discretion of the State a wide latitude as far as the interference of the Supreme Court of the United States is concerned. Nor with the impolicy of a law has that Court concern, for it is not a harbor in which can be found a refuge from ill-advised, unequal and oppressive legislation.

Mobile County vs. Kimball, 102 U. S. 691.
Railroad vs. Mackey, 127 U. S. 207.

Police Power Applicable to Regulation of Operation of Coal Mines.

The legislature has the clearest right to legislate to protect the health and lives of the many thousands, and under the principles applicable to that branch of the law there has been very little question of the validity of

legislation for the inspection and ventilation of coal mines. An act requiring coal mines to be inspected and ventilated to protect miners from the foul air and dangerous gases, and requiring the mine owners to pay the inspection fees, was held to be valid as a legitimate exercise of the police power of the State, and that such payment of inspection fees was for services beneficial to the owners of the mines.

Chicago, Etc. Co. vs. The People, 181 Ill. 270.
Consolidated Coal Co. vs. The People, 186 Ill. 134.
People vs. Harper, 91 Ill. 357.

Inspection fees to be paid by mine owners under the statutes of Illinois, are not charged for the purposes of revenue, but to cover the expenses of inspections, and the amount of such fees having been determined by the legislature, is conclusive, unless it is manifest that the real purpose is to raise revenue under the guise of police regulation or to prohibit the exercise by a citizen of a lawful calling by means of oppressive license fees.

C. W. & V. C. Co. vs. The People, 181 Ill., 275.
Price vs. The People, 193 Ill., 114.
People vs. Harper, 91 Ill., 357.

It is within the power of the legislature to vest certain officers with the power and authority to prescribe what fees shall be charged in the enforcement of an inspection law which is authorized under the police power of the state.

People vs. Harper, 91 Ill., 357.

Inspection.

Inspection is the examination of certain articles made by law subject to such examination so that they may be declared fit for commerce; an examination of an article to determine its fitness for a given purpose.

16 A. & E. E. L., 899.

Amendment of 1897.

The general purpose and object of the mine inspection law of Illinois is not in conflict with any provision of the Federal Constitution, nor is that portion of the law providing for the payment of inspection fees by mine owners repugnant to any constitutional provision, consequently, whether the amendment of 1897, by which section 11 (e) is affected, is or is not constitutional, is a wholly immaterial consideration.

Part of a statute may be unconstitutional and void and the residue constitutional and valid. The test is not whether the void and valid parts are contained in the same section, for the distribution into sections is purely artificial; but rather whether they are essentially and inseparably connected. If, when the unconstitutional portion is stricken out, that which remains is complete in itself and capable of being executed in accordance with the apparent legislative intent, it must be sustained.

23 A. & E. E. L., 225.
People vs. Cooper, 83 Ill. 584.
Heinze vs. People, 92 Ill. 406.
6 A. & E. E. L. (2d ed.), 1088.
Presser vs. Illinois, 116 U. S. 252.
Field vs. Clark, 153 U. S. 649.
C., B. & Q. R. R. Co. vs. Jones, 149 Ill. 365.
The People vs. State Reformatory, 148 Ill. 425.

If the change of the statute contemplated by the amendment to section 11 (e) is in violation of the Federal Constitution, then the proposed amendment of 1897 is void and that section remains as originally enacted.

"An unconstitutional act is not law; it confers no rights; it imposes no duties; it

affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed."

6 A. & E. E. L. (2d ed.), 1091.
Newman vs. The People, 23 Col. 300.
Gilchrest vs. Schmidling, 12 Kan. 263.

May it Please the Court:

It is contended by counsel that the act of the Legislature of Illinois providing for the inspection of coal mines by district mine inspectors and the payment of their fees by the mine owners, gives the district inspectors an "untrammeled discretion" as to how often they will inspect and an "unregulated discretion" as to what fees they will charge within the limits fixed by the statute, and that by reason thereof the statute is repugnant to the Fourteenth Amendment to the Federal Constitution as depriving mine owners of their property without due process of law, and denying to them the equal protection of the laws. We do not suppose it is seriously insisted here that under any provision of this statute now before this Honorable Court for consideration, mine

owners can be deprived of their property without due process of law. Due process of law means:

> "Law in its regular course of administration through the courts of justice,"

and it will be seen by an inspection of the provisions of this act that the fees of mine inspectors can not be collected in any other way, if resisted, than through the regular channels provided by law—through the courts of justice—as is being done in this case. We assume, therefore, that counsel relies upon the other provision of the Fourteenth Amendment, and seriously insist that this statute denies to mine owners "the equal protection of the laws." It can not be admitted, however, that this statute gives to mine inspectors an "untrammeled discretion" as to how often they will inspect, nor that it gives them an "unregulated discretion" as to what fees they will charge within the limits fixed by the statute. On the contrary the statute provides that such inspectors shall be appointed upon the recommendation of a board of examiners elected for that purpose, and certain qualifications for the office are provided by the statute; and each inspector is

required to give bond conditioned for the faithful performance of his duties in every particular as required by the provisions of the act, to be approved by the Governor of the State. Such inspectors are therefore held to a strict accountability to make inspections according to the provisions of the act, when such inspections are necessary, not fewer than four a year for each mine subject to inspection, and while discretion is necessarily vested in the inspector as to the number of inspections he shall make and of necessity some range is allowed as to the amount of fees charged for each inspection, yet his inspections are subject to control by the courts, and by the express provisions of the statute he is subject to removal from office for neglect or malfeasance in the discharge of his duty as in said act provided.

It is insisted, however, that the law makes the number of inspections entirely discretionary with the inspector and it devolves upon him the duty of classification, which the legislature ought to have performed. This position has been answered by the Supreme Court of this

State in the opinion handed down in this case, a copy of which is filed in the record, and also in the case of the *Chicago, Wilmington & Vermillion Coal Company vs. The People*, 181 Ill. 270. The very necessity for a mine inspector makes it impossible that the legislature could fix by any definite and invariable rule the number of inspections that should be made by a mine inspector. In the nature of things it cannot be known when an inspection may be necessary. This depends upon the physical conditions surrounding each and every mine. If there should be a sudden accumulation of noxious gas, or should be a falling of the roof of a mine, or by fire, or some other cause, should an escapement shaft become dangerous, an inspection would be necessary; and if any such event should happen to a mine at a time distantly removed from the time fixed by the statute for an inspection, the very object and purpose of the law would fail. Under such a statute when the greatest necessity for an inspection might arise, themine inspector would be powerless to inspect unless the emergency should happen at the time fixed by the statute for the inspection to occur. It would be entirely unreasonable to suppose that the Legislature is so limited by

constitutional provisions as to make a statute necessary. It is equally as impracticable for the legislature to provide according to any physical circumstance or artificial classification a means by which a uniform and invariable scale of inspection fees could be fixed. The amount of labor involved in the inspection of the same mine on different occasions must necessarily vary according to the circumstances surrounding the mine. One mine having a large number of employes might be so circumstanced as to involve less labor on the part of the inspector than a smaller mine with fewer employes, and on different occasions the amount of labor involved in the inspection of the same mine may vary widely, and so the legislature has wisely left the question of the amount of fees and the number of inspections to be made of each mine, in a reasonable measure within the discretion of the mine inspector. This is not an unusual provision with reference to the enforcement of police regulations, but on the contrary the same rule was adopted by the legislature in relation to the inspection of grain, it having been provided that the fees for the inspection of grain shall be regulated by the Railroad and Warehouse Commissioners,

and such a law was held valid by the Supreme Court of this State in the case of *People vs. Harper*, 91 Ill. 357.

It is contended that under the statute a mine inspector has it within his power to inspect one mine owner out of business, while another mine owner to whom he is friendly might be subjected only to the minimum number of inspections at the minimum fee fixed by the statute, without reference to the real necessities of the case, and that such a possibility renders the statute unconstitutional.

It is not questioned but what that power lies with a district mine inspector who would not hesitate to violate his oath of office and subject himself to the pains and penalties of such conduct. The same may be said of any law upon the statute books, however definite and certain it may be in all of its parts and provisions, but courts will not presume that officers who are put under the most solemn obligations for the faithful performance of their official duties, will violate the duties imposed upon them by law, in order to justify the court in holding a statute unconstitutional. Whether a law is discriminating and unconstitutional is not to

be determined by considering what may possibly be done by an illegal and unjust administration of it, but by considering whether when fairly and legally administered it will operate unequally and unjustly in contravention of some constitutional provision. All presumptions of law are in favor of the faithful and conscientious discharge of all duties of office imposed upon a particular officer; and in the enforcement of a statute, where such a discharge of official duty will not result in a violation of any provision of the Federal Constitution, the statute must be held valid without respect to what might be done in violation of its provisions.

Counsel attempts to support his argument by a citation of the case of *Stewart vs. Palmer*, 74 N. Y., 183, which he supposes to support the statement in his brief that the constitutional validity of a law is to be tested not by what has been done under it, but what may, by its authority, be done. The case of *Stewart vs. Palmer* is not at all relevant to the question here under discussion, nor does that authority support the doctrine contended for by counsel. The law complained of there was a law impos-

ing an assessment for local improvements without notice to and a hearing or an opportunity to be heard, on the part of the owner of the property to be assessed; and the Supreme Court of New York held, that such a statute would operate to deprive one of his property without due process of law. The Supreme Court used the language of counsel's brief in the opinion, but it was applied in quite a different way from what he seeks to apply that language here. There it was contended that although the statute provided for no notice to be given, that in fact notice had been given to the property owner, and the Supreme Court very properly held that the giving of a notice not required by the statute, would not cure the defect of the statute under the provisions of which it was contemplated that an assessment might be made against property for local improvements without giving any notice whatever to the property owner.

The case of the *City of Baltimore vs. Reddick*, 40 Md., 217, is relied upon as the principal authority upon which counsel bases his argument that vesting a discretion in the mine inspector as to the number of inspections he shall make

and as to the amount he shall charge for each inspection, is in violation of the Fourteenth Amendment. An examination of that case will disclose that it does not support the position of counsel. It was there held that an ordinance requiring the removal of steam engines in such cases as presented by the facts of that case, after notice from the mayor, without prescribing for their construction, regulation or use, committed to the unrestrained will of a single public officer a power over the use of steam within the limits of the city of Baltimore, practically absolute, so that he might prohibit its use altogether. It will be noted that the exercise of this power might be within the letter of the ordinance complained of; or, in other words, the ordinance *by its terms* conferred this extraordinary power upon, and left it without limitation or means of regulation in the hands of, a single individual. The Supreme Court in passing upon the question, used the language quoted in the argument of counsel for plaintiff in error; but when we consider that the exercise of absolute and arbitrary power by a district mine inspector would not only be a violation of the letter, but the spirit of the statute under which he is appointed, and would sub-

ject him to removal from office for a violation of his duties, as well as to create a liability upon his official bond, then it will be comprehended how foreign to the issue here presented is the case of *Baltimore vs. Reddick*.

The case of *Yick Wo vs. Hopkins*, 118 U. S., 356, is another case relied upon in support of the same doctrine. The case is quite as foreign to the real issue as the cases already mentioned; in that case the Supreme Court of the United States, in passing upon the question of the exercise of arbitrary power, use this language:

> "We are not able to concur in that interpretation of the power conferred upon the supervisors. There is nothing in the ordinances which points to such a regulation of the business of keeping and conducting laundries. They seem intended to confer, and actually do confer not a discretion to be exercised upon a consideration of the circumstances of each case, but a naked and arbitrary power to give or withhold consent, not only as to places, but as to persons."

Mine inspectors, under the laws of Illinois, must give consideration to the circumstances of each case, both with reference to when an inspection shall be made and what fee shall be charged therefor. So the rule laid down in the

case of *Yick Wo vs. Hopkins*, is entirely met by the provisions of this statute. However, this was a case in which two Chinamen were arrested, fine : and imprisoned in the city of San Francisco, California, for carrying on a laundry business in that city without the consent of the board of supervisors of that county, and the real ground of the decision appears on page 374, where the Court say:

> "No reason whatever, except the will of the supervisors, is assigned why they should not be permitted to carry on, in the accustomed manner, their harmless and useful occupation, on which they depend for a livelihood. And while the consent of the supervisors is withheld from them and from 200 others who have also petitioned, all of whom happen to be Chinese subjects, 80 others, not Chinese subjects, are permitted to carry on the same business under similar conditions. The fact of this discrimination is admitted. No reason for it is shown, and the conclusion can not be resisted, that no reason for it exists except hostility to the race and nationality to which the petitiners belong, and which in the eye of the law is not justified. The discrimination is, therefore, illegal, and the public administration which enforces it is a denial of the equal protection of the laws and a violation of the Fourteenth Amendment of the

> Constitution. The imprisonment of the petitioners is, therefore, illegal, and they must be discharged."

State legislation is not obnoxious to the provisions of the Fourteenth Amendment if all persons subject to it are treated alike under similar circumstances and conditions in respect both of the privileges conferred and liabilities imposed. It is not insisted that any one in the mining business is not subject to the provisions of the mining law of Illinois and all mines are equally subject to be inspected by the district mine inspector. It is true that section 11e was so amended in 1897 that under the provisions of that section the owners and operators of any mines wherein not more than five men are employed at any one time, are not subject to prosecution under the provisions of that section for failure to observe proper sanitary regulations and pay inspection fees. Counsel insists that this exception in the amendment to section 11e is not such a classification as would be recognized by the courts as rational, and that inasmuch as it takes out of the operation of the penalty of this statute persons alike situated as those left within its operation, that it amounts to a denial to those remaining sub-

ject thereto of the equal protection of the laws. However, counsel facetiously suggest that the legislature in this instance discovered a means of classificstion. But however pungent this suggestion may be this Court will not fail to distinguish the character of this classification from that which counsel insists ought to have been made to render this statute valid. It is true that there is quite a difference between necessity for the inspection of a mine in which a thousand men work and one in which not more than five men work, and it is not conceded that this is not a rational classification. The amendment to section 11e does not in terms exempt mines not having more than five men in them from inspection, and from such other regulations as are provided by this act; but in effect it does provide that such mines may continue to be operated while other mines not complying with the sanitary regulations existing in this State and not paying inspection fees, are subject to be closed by a writ of injunction sued out by the public prosecutor, and giving that amendment its full scope and meaning, it would practically take out of the operation of tne statute all mines in which not more than five men are employed at any one time. It is urged

by the counsel that this amendment operated to so change section 11e as to exempt certain persons who would otherwise be subject to the penalties of the law, from such penalties, leaving others not more guilty of violation than they, still subject thereto, and that by reason thereof such a discrimination is made as amounts to a denial of an equal protection of the laws of those remaining subject to such penalties.

This section of the statute is not in fact a penal section at all, but it simply provides a means of enforcing observance of the sanitary laws for the regulation of mines and the collection of fees by a writ of injunction. Yet, regarding it for the purpose of this discussion as a penal statute and moreover, considering that this provision would render this section obnoxious to the Fourteenth Amendment to the Constitution, yet there are strong, and it seems to me, conclusive reasons why it can not have that effect.

If the act as originally passed by the legislature is a valid act, and the exception whereby mines in which not more than five men are employed at any one time, are taken out of its

operation, is an unconstitusional provision, then an amendment embodying that provision would be absolutely null and void.

> "An unconstitutional act is not law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed."

That being true, this act stands as though section 11e had never been amended.

Yet there is still another reason why the constitutionality of section 11e will have no bearing here. This act, when considered as a whole, is for the purpose of enforcing sanitary regulations in mines. Mine inspectors are appointed for that purpose, whose duty it is to make inspections and see to the carrying into effect of the provisions of the act. Section 11e is simply one of the means provided by the statutes of the State of Illinois for the purpose of enforcing these regulations. Other penal provisions of the various statutes have also been passed for that purpose. Section 11e may be entirely stricken out and yet the act would be a complete act and could be enforced and the

general object and purpose of the act as effectually carried into effect as though section 11e had not been enacted.

It is a well settled doctrine that though part of a statute may be unconstitutional and void, the residue may be constitutional and valid. (See authorities cited in brief.) If, when the unconstitutional portion is stricken out, that which remains is complete in itself and capable of being executed in accordance with the apparent legislative intent, it must be sustained. Applying this rule, it is a matter of wholly immaterial consideration whether section 11e is or is not a valid section. And it is equally as conclusive, upon the authorities cited in the brief, that if section 11e was ever a valid provision, its validity has never been affected by the supposed amendment of 1897. Strike it out and the harmony, symmetry, and potency of the mining act of Illinois would be unimpaired. That which would remain would be as capable of enforcement as though this section had never been designed as a part of the original act.

It is also insisted that the mine inspection act is not an inspection law within the true

meaning of that word and in the sense which is required to make it a proper police regulation. Here is an assumption that in order for this law to be a proper police regulation, it must be an inspection law within the technical meaning of that term. That is not true. Any law which has for its purpose the protection of the lives and health of the citizens of the State is a proper police regulation, whether it involves an inspection in the technical sense or not. This is not an inspection law in the technical sense of that term. Inspection, in its technical sense, means:

> "An examination of certain articles made by law subject to such examination so that they may be declared fit for commerce."

The inspection of mines is not for the purpose of determining the character of the mine as an article of commerce, nor is it for the purpose of determining the character of its product for that purpose. Yet an inspection of a mine will determine its sanitary condition, and will determine whether the provisions of the statutes made for the regulation of mines in this State and the protection of the lives and health of miners, are being complied with. Counsel

argues that a law providing for an inspection, the purpose of which is to determine whether certain statutory provisions are being complied with, so that penalties may be enforced against those in violation of the law, is not a proper inspection law, and the case of *People vs. Compagnie General vs. Transatlantique*, 107 U. S. 59, is cited in support of that doctrine, but that case does not support his contention; nor do we believe that any well considered case can be found to sustain his position. In that case the inspection law before the Court was a law providing for the inspection of alien passengers coming into the State of New York, to determine whether they were criminals, paupers, lunatics, orphans or infirm persons without means or capacity for supporting themselves and subject to become a public charge. The Supreme Court of the United States, considering that question, determined that such a law was not a proper inspection law for the reason that it could not be ascertained whether such persons were paupers, lunatics, infirm persons, etc., by an inspection; and that such regulation is merely denominated an inspection law for the purpose of evading the constitutional provision. It was not sought by that

law to determine, by inspection, whether such persons were guilty of a crime, nor was it held by the Supreme Court in that case that a law providing for an inspection which might incidentally result in the detection of violations of the law, would for that reason be an unconstitutional provision and not a proper inspection law. On the contrary, all inspections under law are for the purpose of ascertaining whether the law is being complied with, and to enforce compliance when necessary.

It is urged with apparent earnestness that this statute is a revenue measure, and counsel submits to the Court a calculation to show that not all the money earned by the district mine inspectors can be legitimately used in the payment of the salaries of mine inspectors.

This position is not correct. The fact that more money will be collected under the provisions of the statute than barely sufficient to pay the expenses of inspection will not give this law the character of a revenue measure. In order to be a revenue measure the object should be to raise money for the use of the public and not to protect the lives and health of the miners; and the latter being its object, the

character of the act is determined thereby, although some money may incidentally fall into the public treasury in the enforcement of the provisions of the act.

But if a revenue measure and not in conflict with some provision of the Federal Constitution, that would not affect the validity of the statute so far as this Court is concerned. No valid objection to it, even as a revenue measure, has been pointed out by counsel, and it is exceedingly doubtful that as a revenue measure it would not be upheld by the Supreme Court of Illinois; and it would certainly be valid as tested by the Federal Constitution.

The amount of fees to be charged is a matter of legislative discretion, and that having been determined by the legislature is conclusive, unless it is manifest that the real purpose is to raise revenue under the guise of police regulation, or to prohibit the exercise of a lawful calling by means of oppressive license fees.

Price vs. The People, 193 Ill., 114.
People vs. Harper, 91 Ill., 357.

In the case *Price vs. The People, supra*, the Supreme Court of Illinois holds that the busi-

ness of employment agents may be taxed for the purposes of revenue; and, upon the reasoning adopted by the court in that case, no distinction is perceived for the application of a different rule to the business of mining coal.

We must conclude that this statute is not one that is capable of being enforced arbitrarily and with discrimination, unequally and unjustly without regard to *legal* discretion, but it is a staute which comes clearly within the general police powers of the State.

Barber vs. Connolly, 113 U. S., 27.
Missouri Pacific Railway vs. Hughes, 115 U. S.. 512.
Minneapolis Railway Company vs. Beckwith, 129 U. S., 27.
Powell vs. Pennsylvania, 127 U. S., 678.
St. Louis & S. F. Ry. vs. Matthews, 165 U. S.. 1.
Jones vs. Brim, 165 U. S., 180.
Davis vs. Mass., 167 U. S., 43.

It applies alike to all persons and things subject to its operation, and although it may operate differently upon those engaged in the business of mining from what it does upon persons engaged in other lines of business, yet for that reason it is not in violation of the Constitution. It is admitted by counsel, however, that

a law of this character is not in violation of the Constitution, if properly framed. We insist that this is such a law. While certain discretionary powers are necessarily left with mine inspectors, those powers are to be used in the exercise of a legal, as distinguished from an arbitrary discretion, and for that reason this statute does not come within the rule laid down in any case cited by counsel for plaintiff in error.

We commend to the careful consideration of the Court the opinions handed down by the Supreme Court of Illinois in the case of *Chicago, Willmington & Vermillion Coal Co. vs. The People*, 181 Ill., 270, and the *Consolidated Coal Company vs. The People*, 186 Ill., 134. The reasons upon which the opinions in those cases are based is a complete answer to every proposition counsel for plaintiff in error has urged to this honorable Court. It is shown by the Court in very clear and forcible language and logic, that the supposed defects in the mine inspection law of this State are such as in the very nature of things must necessarily exist, and that to meet the objections advanced by counsel for plaintiff

in error would be to render the statute absolutely nugatory and defeat entirely the objects of the legislature in its enactment.

We therefore respectfully urge that your honors will affirm the decision of the Supreme Court of Illinois in this case.

Respectfully submitted,

HOWLAND J. HAMLIN,

Attorney General of Illinois.

Supreme Court of the United States.

No. 197.—October Term, 1901.

The Consolidated Coal Company of St. Louis, Plaintiff in Error, *vs.* The People of the State of Illinois. } In error to the Supreme Court of the State of Illinois.

[April 14, 1902.]

This was an action of assumpsit originally brought in the Circuit Court of St. Clair County by the People of the State of Illinois against the Consolidated Coal Company of St. Louis, a corporation of Illinois, to recover the sum of $1,818 for the fees of State mine inspectors for the inspection of certain coal mines located in Illinois, owned and operated by the defendant under "An act providing for the health and safety of persons employed in coal mines," originally enacted May 28, 1879, and the amendments thereto.

The case was submitted to the court without a jury upon a stipulation of facts, in which it was agreed that the mines of the defendant, thirty-one in number, had been inspected between November 2, 1895, and June 26, 1899, by a State inspector, whose aggregate fees were $1,818; that the Secretary of the Bureau of Labor Statistics presented the defendant with the inspection bills and demanded payment therefor, which defendant refused to pay.

It was further stipulated that the charge for the recovery of which this action was brought was made in pursuance of the act of May 28, 1879, and that the question to be raised and disposed of was the validity and constitutionality of so much of said above entitled act and the amendments thereto, as related to the inspection fees of the said mine inspectors, and the imposing upon the mine operator and owner the duty of paying such fees, and also whether there was any remedy at law to recover such fees.

A judgment having been entered for the payment of these fees the case was carried by writ of error to the Supreme Court, where the judgment of the Circuit Court of St. Clair County was affirmed.

Mr. Justice Brown delivered the opinion of the Court.

The act of the general assembly of the State of Illinois, entitled an act to provide for the health and safety of persons employed in coal mines, originally passed May 28, 1879, subsequently incorporated in the Revised

Statutes of 1895, and amended in 1897, (Hurd's Statutes, 1897, *p.* 1088,) provides as printed in the margin.*

The Supreme Court found that all the State questions involved in this case had been disposed of in *Chicago &c. Coal Co.* v. *The People*, (181 Ill. 270.) It only remains for us to determine whether the validity of the State statute above cited was drawn in question on the ground of its repugnancy to the Constitution and laws of the United States, and the decision was in favor of its validity, when it should have been held invalid. While the constitutionality of the law was not specially set up and claimed before the trial in the Circuit Court, there was a motion made in arrest of judgment, in which the invalidity of the statute was specially set up upon the ground of its repugnancy to the Fourteenth Amendment to the Constitution. The motion was denied, although the Supreme Court did not in terms pass upon the Federal constitutionality of the law. But this was a sufficient presentation of the Federal question.

The regulation of mines and miners, their hours of labor, and the precautions that shall be taken to ensure their safety, health and comfort, are so obviously within the police power of the several States, that no citation of

---

*"SEC. 11*a*. This State shall be divided into seven inspection districts, as follows:" &c.

"SEC. 11*b*. *The Governor shall*, upon a recommendation of a board of examiners elected for that purpose, composed of two practical coal miners, two coal operators and one mining engineer, to be appointed by the Bureau of Labor Statistics of this State, all of whom shall be sworn to a faithful discharge of their duties, *appoint seven properly qualified persons to fill the offices of inspectors of coal mines in this State* (being one inspector for each district provided for in this act,) whose commission shall be for the term of two years, but they shall at all times be subject to removal from office for neglect of duty or malfeasance in the discharge of duty, as hereinafter provided for.

"SEC. 11*c*. The inspectors so appointed shall have attained the age of thirty years, be citizens of this State and have a knowledge of mining engineering sufficient to conduct the development of coal mines and a practical knowledge of the methods of conducting mining for coal in the presence of explosive gases, and of the proper ventilation of coal mines. They shall have had a practical mining experience of ten years, and shall not be interested as owner, operator, stockholder, superintendent or mining engineer of any coal mine during their term of office, and shall be of good moral character and temperate habits, and shall not be guilty of any act tending to the injury of miners or operators of mines during their term of office. They shall provide themselves with the most approved modern instruments for carrying out the intention of this act," &c.

"SEC. 11*d*. Any person, company or corporation operating any coal mine in this State *shall be required to pay an inspection fee of not less than six dollars nor more than ten dollars for each visit of inspection or investigation of a coal mine by a State mine inspector, such fee to be regulated by the class of the mine, (which shall be fixed by the inspector and depend upon the length of time consumed, and the expense necessarily in-*

authorities is necessary to vindicate the general principle. Many of these cases are reviewed in *Holden* v. *Hardy*, (169 U. S. 366,) in which it was held to be competent for a State legislature to limit the hours of labor, in mines and smelting works, to eight per day.

1. We do not understand the general principle to be questioned that the State may appoint mining inspectors,, and provide for their payment by the owners of mines, (*Packet Co.* v. *St. Louis*, 100 U. S. 423; *Morgan* v. *Louisiana*, 118 U. S. 455; *Nashville &c. Railway* v. *Alabama*, 128 U. S. 96, 121; *County of Mobile* v. *Kimball*, 102 U. S. 691; *Charlotte &c. R. R.* v. *Gibbs*, 142 U. S. 386; *Chicago &c. Coal Company* v. *People*, 181 Ill. 270;) but it is insisted that the acts here involved, in so far as they give to district mining inspectors, a discretion as to the number of times they shall inspect such mines, and a further discrimination as to what fees they shall charge, within the limit fixed by these acts, is in contravention of the Fourteenth Amendment, forbidding a State from depriving any person of life, liberty or property without due process of law, or denying any person within its jurisdiction the equal protection of the law.

---

curred in the inspection of such mine,) and such fees shall be paid quarterly by the person, company or corporation operating the mine inspected to the Secretary of the Bureau of Labor Statistics and by him covered into the State treasury, to be held as a fund for the payment of salaries of State Mine Inspectors, as herein provided. *It shall be the duty of each inspector, as often as he may deem it necessary and proper, and at least four times a year, to inspect each and every mine in his inspection district.* Each inspection shall be certified to by the pit committee and mine manager of said mine. It shall be the duty of each inspector to keep a detailed record of all inspections and of all fees for such inspections, and he shall file a copy of the same with the Secretary of the State Bureau of Labor Statistics quarterly, between the first and fifteenth days of the following months: October, January, April and July, which reports shall be published annually as a part of the regular report of the State Bureau of Labor Statistics. The inspectors provided for in this act shall receive as full compensation for their services the sum of eighteen hundred dollars each per annum, to be paid quarterly out of such funds in the State treasury as may be received for inspection fees: *Provided, however*, That in the event of such fees being inadequate to compensate the inspectors in the amount provided herein, the deficiency in the salaries shall be paid out of any moneys in the State treasury not otherwise appropriated. The mine inspector shall be required to post up in some conspicuous place, at the top of each mine visited and inspected by him, a plain statement of the condition of said mine, showing what, in his judgment, is necessary for the better protection of the lives and health of persons employed in said mine; such statement shall give the date of inspection and the number of hours spent in the inspection, also the date of the last previous inspection, and shall be signed by the inspector and the check weighman, and, if there be no check weighman, employed by the miners, then said statement shall be signed by the weighman at the mine.

"SEC. 11*e*. It shall be unlawful for any person, company or corporation to operate any coal mine in this State without first having complied with all the conditions

2. Another question is whether the act, as amended in 1897, in so far as *it discriminates as to penalties imposed* upon some persons engaged in the mining business, and not upon others, is a proper exercise of the police power. It is true that the act of 1897 amended the former law of 1895, by limiting its application to coal mines "where more than five men are employed at any one time." This is a species of classification which the legislature is at liberty to adopt, provided it be not wholly arbitrary or unreasonable, as it was in *Cotting* v. *Kansas City Stock Yards Company*, (183 U. S. 79,) in which an act defining what should constitute public stock yards and regulating all charges connected therewith was held to be unconstitutional, because it applied only to one particular company, and not to other companies or corporations engaged in a like business in Kansas, and thereby denied to that company the equal protection of the laws. In the case under consideration there is no attempt arbitrarily to select one mine for inspection, but only to assume that mines, which are worked upon so small a scale as to require only five operatives, would not be likely to need the careful inspection provided for the larger mines, where the workings were carried on upon a larger scale or at a greater depth from the surface, and where a much larger force would be necessary for their successful operation. It is quite evident that a mine which is operated by only five men could scarcely have passed the experimental stage, or that precautions necessary in the

---

and sanitary regulations required under existing laws and paying all inspection fees provided for in this section, and in case of the refusal of any person, company, corporation, owner, agent or operator to pay said inspection fees, after assuming to operate a coal mine, it shall be the duty of the State's attorney of the county, or any other attorney, in case of his refusal promptly to act, to proceed on behalf of the State against said person, company, corporation, owner, agent or operator of said mine, by injunction, without bond, to restrain said person, company, corporation, owner, agent or operator from continuing or attempting to continue to operate said mine or carry on a mining business."

In 1897 section 11*e* was amended so as to read as follows, the words in italics being inserted into the paragraph as it was originally enacted (Session Laws, 1897, p. 269):

"SEC. 11*e*. It shall be unlawful for any person, company or corporation to operate any coal mine in this State, *where more than five men are employed at any one time*, without first having complied with all the conditions and sanitary regulations required under existing laws and paying all inspection fees provided for in this section, and in case of the refusal of any person, company, corporation, owner, agent or operator to pay said inspection fees, after assuming to operate a coal mine, it shall be the duty of the mine inspector in said district, through the State's attorney of the county, or any other attorney, in case of his refusal to promptly act, to proceed on behalf of the State against said person, company, corporation, owner, agent or operator of said mine by injunction, without bond, to restrain said person, company, corporation, owner, agent or operator from continuing or attempting to continue to operate said mine or carry on a mining business."

operation of coal mines of ordinary magnitude would be required in such cases. There was clearly reasonable foundation for a discrimination here.

It is true that the act of 1897 does not in terms declare that the act of 1895 shall only apply to coal mines where more than five men are employed at any one time, but merely exempts the owners of such mines from punishment for violations of the general law. No one, however, can read this act, in connection with the prior act of 1895, without perceiving an intention on the part of the legislature to exempt such mines from the scope of the act. An act which declares it to be unlawful for any person to operate mines *of a certain class* without first complying with all the conditions and sanitary regulations required undor existing laws, and paying all inspection fees, and, in case of refusal, to make it the duty of the mine inspector, through the State's attorney, to proceed in behalf of the State against such person, to compel the discontinuance of the mine, is so plainly an exemption from the operation of the law of all *other* mines as to constitute a classification in their favor.

3. Another charge is that by section 11*d*, "it shall be the duty of each inspector, as often *as he may deem it necessary and proper*, and at least four times a year, to inspect each and every mine in his inspection district." It requires no argument to show that, for the protection of the operatives, one mine may be required to be inspected oftener than another, depending largely upon the number of miners, the depths of their workings and the nature of the ground through which the excavations are made. While at a certain stage of excavation the precautions imposed by the mining inspector may be quite adequate for the protection of the operatives, at another time the same precautions would be obviously insufficient, depending largely upon the rapidity with which the excavations were made and the changes of air observed as the excavations progressed.

It is true that the act itself furnishes no basis for a classification as to the number of inspections and as to the price charged in each case, except that it provides that no inspection shall be required, unless five operatives are employed at the same time, that at least four inspections shall be made each year, and that the fees shall be dependent upon the length of time consumed, and the expense necessarily incurred in the inspection of such mine. It also provides that the charges for each inspection shall not be less than six nor more than ten dollars.

It is insisted that such classification of mines, as to the number of inspections and fees therefor, should be made by the legislature, and nothing be left to the inspectors or other officers to determine the number of times a particular mine shall be inspected and the fees chargable therefor. The ordinary classification is made by the legislature, where such classification can be logically made, either upon the basis of capital stock, number of operatives, mileage, or other facts which can be seized upon as an easy

and an approximately just basis for classification. But in such a case as this there are so many elements entering into the classification as to make it impossible to seize upon one or two, and make them the only basis. For instance, the number of inspections to be made might depend not only upon the size of the mines, and the number of the operatives, but upon the character of the work being done, the nature of the soil being excavated, the depth of the excavation and a dozen other features, all of which might enter into the basis of a classification by a competent inspector, and no one of which can be said to be determinative.

We do not regard the act as necessarily violative of the Fourteenth Amendment, in the fact that some discretion is allowed to the inspector in determining the number of times the mines shall be inspected, and the fees fixed therefor, particularly in view of the fact that no complaint is made of the abuse of such discretion, or that the inspector has been "guilty of any act tending to the injury of miners or operators of mines during their term of office." (Sec. 11c.)

While it is undoubtedly true that legislative power cannot be delegated to the courts or to the executive, there are some exceptions to the rule under which it is held that Congress may leave to the President the power of determining the time when or exigency upon the happening of which a certain act shall take effect. Thus in the leading case of *The Aurora*, (7 Cranch, 382,) it was held that Congress might make the revival of a law conditional upon a fact then contingent, and empower the President to declare by proclamation that such fact has occurred and the law revived. It has also been the immemorable policy in this country and in England to vest in municipal organizations certain local powers in respect to which they are peculiarly interested, and of the necessities of which they are much better informed than a general legislature possibly could be. Other instances are cited by Judge Cooley in his work upon Constitutional Limitatations: "For the like reasons the question whether a county or a township shall be divided and a new one formed, or two townships or school districts, formerly one, be reunited, or a county seat be located at a particular place, or after its location removed elsewhere, or the municipality contract particular duties, or engage in a particular improvement, is always a question which may be with propriety referred to the voters of the municipality for decision."

The last case in this court in which the question arose, is that of *Field* v. *Clark*, (143 U. S. 14,) in which it was held that while Congress could not under the Constitution delegate its legislative power to the President, it might authorize him to suspend, by proclamation, the free introduction of sugar, coffee and similar articles, when he was satisfied that any country producing such articles imposed duties, or other exactions, upon the products of the United States which he might deem to be reciprocally unequal or unreasonable.

In enacting a law with regard to the inspection of mines, we see no objection, in case the legislature find it impracticable to classify the mines for the purposes of inspection, to commit that power to a body of experts who are not only experienced in the operation of mines, but are acquainted with the details necessary to be known to make a reasonable classification, although it may affect the amount of fees to be paid by the mine owners.

It is obviously necessary that the number of inspections per year shall be determined by some one and by some executive officer. As it is clearly a matter of detail which could not be determined by the courts, it occurs to us that it could be entrusted to no one so safely as to the inspector of the district, who is appointed with great care, and who must be thirty years of age, a citizen of the State, and have a knowledge of mining engineering sufficient to conduct the development of coal mines and a practical knowledge of the method of conducting the mining for coal in the presence of explosive gases and of the ventilation of coal mines. Each one must have a practical mining experience of ten years, not interested as owner, operator, stockholder, superintendent or mining engineer of any coal mine during his term of office, and be of good moral character and temperate habits.

The stipulation upon which the case was tried shows that the defendants were the owners of thirty-one mines, and that they were inspected between November 22, 1895, and June 26, 1899, two hundred and forty times, which was at the rate of about seventy-eight times per year for all of the thirty-one mines, or about two and one-half times per year for each mine. As section 11*d* of the act requires each inspector to inspect each and every mine in his district at least four times a year, it would seem that instead of overdoing his duty, he had been derelict in the performance of it.

3. It is also true that the fees for each inspection shall not be less than six dollars nor more than ten dollars, and that such fees shall be regulated by the class of the mine, which shall be fixed by the inspector and depend upon the length of time consumed and the expense necessarily incurred in the inspection of such mine. Objection is made upon the ground that it gives to each mining inspector not only the right to determine the number of times each mine shall be inspected, but the fees to be charged in each case. If his discretion were unlimited in this direction, and the fees were retained by himself, there would be much force in the suggestion; but the truth is that the amount of the fee must be in each case somewhere between six dollars and ten dollars, and must be paid to the Secretary of the Bureau of Labor Statistics, and by him covered into the State treasury, to be held as a fund for the payment of the salaries of the mining inspectors. Each inspector provided for by the act receives for his services $1,800 per annum, to be paid quarterly out of the funds in the State treasury received for the inspection fees, and in the event of such fees being inadequate to

compensate such inspectors in the amount provided for herein, the deficiency of the salaries shall be paid out of the money in the State treasury not otherwise appropriated. It appears, then, *first*, that the State inspector receives a regular salary, neither increased nor diminished by the number of inspections or the amount paid for each inspection; and, *second*, that he receives such salary directly from the Bureau of Labor Statistics and not from the fees paid to him therefor. As his compensation is dependent neither upon the number of his visits nor upon the amount of his fees, it is difficult to see how he would gain by multiplying one or magnifying the other. We know of no reason why the legislature should deprive itself of the best attainable evidence of the facts it seeks to make determinative of these two questions.

As we fail to discover any repugnancy between the acts in question and the Fourteenth Amendment to the Constitution, we are of opinion that the decree of the Supreme Court was right, and should be

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.